SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961-2

No. 980

WILLIAM A. PORTER,
Petitioner,

vs.

HONORABLE R. C. STANFORD, JR.,
Judge of the Superior Court,
Maricopa County, State of
Arizona,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

STEPHEN W. LANGMADE
34 West Monroe
Phoenix, Arizona
Counsel for Petitioner.

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No.

WILLIAM A. PORTER,

Petitioner,

vs.

HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Arizona entered in the above-entitled case on February 20, 1962.

OPINIONS BELOW

The decree herein at issue, in Cause No. 7541, in the Supreme Court of Arizona, issued without opinion as a disposition of Petitioner's claims in Cause No. 55179 in the trial court in which Petitioner was named Defendant. Certain issues therein were litigated in the Arizona Supreme Court in 1959 between the Plaintiff

of Cause No. 55179 and various intervenors in said cause, and such proceedings are entitled *Porter v. Stanford* and *Kemble v. Stanford*, and are reported at 347 P. 2d 35, 86 Ariz. 402, and 347 P. 2d 29, 86 Ariz. 892, respectively.

No other opinions have been reported.

JURISDICTION

The denial of Petitioner's application for a Writ of Certiorari was entered, after an informal hearing on the merits, on February 20, 1962, by the Supreme Court of Arizona. No petition for rehearing was filed.

The jurisdiction of this court is invoked under 28 U. S. C. § 1257 (c):

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held by authority exercised under, the United States.

QUESTIONS PRESENTED

1. Are foreign land decrees, issued by virtue of in personam jurisdiction of courts of equity, to be accorded full faith and credit at the situs of the land by being deemed conclusive and enforceable, or is full faith and credit to be recognized only as a passive and involuntary concomitant of the respect afforded deeds executed pursuant to foreign decrees?

2. May the Arizona court grant a res judicata effect to that portion of an Idaho decree which awards money, and enforce an action based thereon, while concurrently refusing to give a res judicata effect to the litigated issue of its own jurisdiction determined by that decree?

   Assuming, successive proceedings in Arizona and Idaho, both affecting the same parties and the same Arizona land, and assuming that Arizona is then required to give full faith and credit to the Idaho decree in further proceedings between the parties, thereby recognizing the litigated issue of jurisdiction as res judicata:

3. What is the effect of the Idaho decree as to its determination of ownership of the Arizona land and its order to the defendant to convey that land?

4. Do valid deeds executed pursuant to the Idaho decree alter the answer to Question 3?

5. Does the fact that the land in Arizona was *custodia legis* throughout all litigation alter the answers to Questions 3 and 4?

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE IV:

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

AMENDMENT XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

**The asterisk, as used herein, indicates that a copy of the instrument, order, decree, etc. referred to is indexed and reprinted in the Appendix which supplements this Petition. A cross-index in the front of the Appendix indicates pages in the Petition on which reference to the instrument appeared. All of the material comprising the Appendix is either a decree of the Arizona Supreme Court, or is material formally pleaded and incorporated into petitions acted on by that court.*

The extended litigation antecedent to this proceeding began in February of 1959, at which time Gladys E. Porter (hereafter referred to as Mrs. Porter), having left her domiciliary State of Idaho two months earlier, filed a separate maintenance action in Arizona against William Arnold Porter, Petitioner herein. Petitioner resided in Idaho and was not personally served in such action, and did not appear in any proceedings thereafter. As an incident of this action, a hotel property[1] in Phoenix, Arizona was attached by order of the Court, whereupon Pearline Porter and Pauline P. Leonard (hereafter referred to as Intervenors) filed a Complaint in Intervention, in February, 1959, alleging that a partnership, of which they were members, owned the hotel property, to which complaint Mrs. Porter, defendant in intervention, filed an Answer. In May, 1959, a decree of separate maintenance* was entered for Mrs. Porter, in default of Petitioner, after a hearing of

[1] This real estate, The Arizona Hotel, located in Phoenix, Arizona, is the only property at issue throughout all proceedings below, and will be referred to simply as "the hotel" or "the hotel property."

which the Intervenors had neither notice nor knowledge, and Mrs. Porter was granted judgment for support moneys in the amount of three thousand dollars ($3,000.00) a month. The Intervenors thereafter sought a writ of prohibition in the Arizona Supreme Court, attempting to halt execution of the judgment insofar as it affected the hotel property until there had been a determination of the ownership of the hotel.

At the same time a third plaintiff in intervention, George C. Kemble, sought an alternative writ of prohibition in the Arizona Supreme Court. His claim of right was based on a creditors' lien against the hotel property, which lien had been acquired incident to a judgment in his favor, against Petitioner, issued by the Superior Court of Cochise County, Arizona, on May 25, 1959. This intervenor's petition charged that his lien was prior to any lien in favor of Mrs. Porter, and he sought to prohibit the enforcement of the support order by the Superior Court of Maricopa County.

In quashing the writ of the Third Intervenor, the Court held* that the controlling issue of whether the Arizona Hotel was community property of the Porters, or partnership property susceptible to his lien, must be determined by the Superior Court of Maricopa County, in which court the question was already at issue.

The alternative writ of the original Intervenors was quashed in the Arizona Supreme Court on the same day by an opinion* in which the Supreme Court recited jurisdiction of the parties, and, without deciding whether the property was owned by a partnership, determined that the community of Mr. and Mrs. Porter did possess an interest in said hotel property and that the lower court had the authority to order the support moneys for Mrs. Porter and children, and to execute judgment by sale of the hotel. A sharp dissent by Justice Johnson, who also dissented to the opinion in the third Intervenor's case, questioned, among other things, the jurisdiction of the court over Defendant-Petitioner and noted that there had been no service on Petitioner herein, either personal or constructive, as to a hearing in the trial court in which Mrs. Porter had

been granted a modification order which altered the support award.

On April 7, 1960, a Sheriff's deed for the hotel property issued to Mrs. Porter, but the receivership in which the hotel was placed by the court order of April, 1959, has obtained at all times since then, up to and including the present time.

Meanwhile, in May of 1959, in the domiciliary State of Idaho, William A. Porter, Petitioner, filed a complaint* for divorce against Mrs. Porter, in which action Mrs. Porter was served, appeared personally and by her attorneys, and filed an answer and cross-complaint*, and in which action the original Intervenors, Porter and Leonard, also filed a complaint* seeking to establish their claims in the Arizona Hotel property.

Mrs. Porter pleaded the Arizona separate maintenance support-judgment in bar in the Idaho court, insofar as distribution of the hotel property was concerned, and there was then litigated the issue of the validity of the Arizona court's jurisdiction in that action, wherein the Idaho court determined* that the Arizona court did not have jurisdiction of William A. Porter, Petitioner, for want of service or valid process, and that the Arizona judgment was, therefore, denied full faith and credit by the Idaho court and held to be null and void.

The Idaho court also litigated and took evidence on the issues raised by the Intervenors and Petitioner herein, and determined* that the Arizona Hotel property was the property of a bona fide co-partnership of which the two Intervenors and the community of Mr. and Mrs. Porter were partners.

It will be noted in the Appendix that the Idaho divorce court issued an order* dated December 16, 1959, which directed various acts respecting property of the Porters, by the parties to the divorce, and that such order directly enjoined Mrs. Porter from taking any action or actions during pendency of the divorce suit which would in any way interfere with the management and/or control of the Arizona Hotel property. This order issued when

both Mrs. Porter and her attorneys, the Messrs. Wilson, of Arizona, were personally appearing before the Idaho court.

Some twelve months later, after the divorce decree was granted Mrs. Porter, it was discovered that Mrs. Porter and her attorneys, the Messrs. Wilson, had disregarded this order and had conspired to defeat any possible judgment of the divorce court by the surreptitious execution of any instrument* purporting to convey an undivided one-half of Mrs. Porter's interest in the Arizona Hotel property to grantees Richard A. Wilson and W. Francis Wilson, her attorneys, which instrument was recorded on May 5, 1960, in Kootenai County, Idaho, the very county over which the divorce court presided. Neither the court nor other parties in the pending divorce suit were apprised of this action between Mrs. Porter and her attorneys prior to issuance of the final decree.[2]

In December, 1960, the Idaho court granted a divorce decree* to Mrs. Porter, by virtue of her cross-complaint, distributed all community property, and ordered deeds of conveyance of various properties executed by both Mrs. Porter and Petitioner, Mr. Porter. These orders included directions to Mrs. Porter to execute deeds of her interests in the Arizona Hotel property to Petitioner and to Intervenors, and directions to Petitioner to execute a deed of part of his interest in the hotel property to the Intervenors, the final result being that Intervenors each received deeds entitling them to their one-sixth (1/6) of the partnership interest and Petitioner received deeds entitling him to his two-thirds (2/3) of the partnership interest. These deeds* were all executed in compliance with the Idaho court judgment, as were various other deeds by which Petitioner, himself, conveyed other real and personal property to Mrs. Porter, and the court's decree enjoined Mrs. Porter and Intervenors from all further proceedings in the Arizona court

[2]The effect of this instrument, or any possible claim of right thereunder, has not been litigated as an issue in the proceedings below, although the fact of the conveyance and the deed, itself, have been set forth before both the trial court and Supreme Court of Arizona, and the divorce court of Idaho took cognizance of the same facts in a proceeding instituted by Mrs. Porter against Petitioner, subsequent to the divorce action.*

by which the Arizona Hotel property could be affected in any manner inconsistent with the Idaho judgment, and ordered Mrs. Porter to dismiss same and thereby to effectuate removal of the receivership in Arizona. In compliance with the order of the Idaho court, Mrs. Porter also executed a Release of Judgment* concerning all claims predicated on the Arizona separate maintenance action, which was delivered to the Maricopa County Superior Court of Arizona, the court of the original proceedings in separate maintenance. Immediately after the Idaho judgment issued, Mrs. Porter filed notice of appeal*, citing as error the court's jurisdiction to order the disposition of the Arizona Hotel property and the injunction as to further actions in Arizona affecting it.

This appeal now pends in the Supreme Court of Idaho. It is anticipated that the appellate decision will issue prior to this court's consideration of the instant petition.

Notwithstanding the injunction of the Idaho court and her appeal in the Idaho Supreme Court, Mrs. Porter has prosecuted the following suits against Petitioner and or Intervenors:

(1) In the proceedings auxiliary to the original separate maintenance action in Arizona, where matters pended between Mrs. Porter and Intervenors in Respondent Judge Stanford's court, the Intervenors filed a Supplementary Complaint* and the duly authenticated judgment from Idaho, seeking to establish their rights in the hotel property. Mrs. Porter, by her answer* of May, 1961, acknowledged the in personam jurisdiction of the Idaho divorce court and the validity of the decree of divorce *except* as to the jurisdiction of the Idaho court to dispose of the hotel property and to order execution of the deeds, which orders she alleged to be void for want of jurisdiction, and *except* as to the litigated issue of Arizona jurisdiction in the separate maintenance proceeding. In this same answer, Mrs. Porter set forth a counterclaim* seeking to establish the Idaho decree, attached a proper copy of the decree to her answer, and prayed the court to grant her all the sums of alimony and support money owed her by Petitioner as the result of the terms of that decree, plus costs and various attorneys' fees, and

to secure such sums by placing charging order on Petitioner's interest in the "Continental Hotels System, a co-partnership," and to appoint a receiver to take charge of said property. This property was, of course, the same hotel property originally at issue, which was still in receivership as a result of the original order of 1959 by Judge Stanford, and was then the main issue of the Intervenor's Complaint.

(2) While these matters pended, Mrs. Porter returned to Idaho and re-opened the proceedings in divorce by securing an order of the trial court directing Petitioner to show cause why he had not paid to Mrs. Porter the support moneys granted her by the divorce decree, and why he should not be cited for contempt. Petitioner appeared and offered evidence in support of his defense and the opinion* of the trial court, issued in September, 1961, refused to hold Petitioner in contempt and specifically found that Mrs. Porter's continued prosecutions in Arizona were the reason for Petitioner's failure to pay, for the reason that his chief source of revenue was normally from the Arizona Hotel property, then in receivership. The court pointed out Mrs. Porter's refusal to obey the injunctions, by citing the secret conveyance to her attorneys and her continued efforts to litigate matters already decided, and renewed admonishments to Mrs. Porter to heed the orders of the court.

(3) Thereupon, Mrs. Porter immediately returned to Arizona, filed another suit* in the Maricopa Superior Court (Cause No. 132632) against Petitioner in November, 1961, in which she again invoked the Idaho divorce judgment, as well as the Arizona separate maintenance decree, and sought to establish both support awards as the basis of a claim for a money judgment in the total amount of approximately Sixty-eight Thousand Dollars ($68,000.00).

As incident to this suit, Petitioner was jailed by direction of a ne exeat writ* secured by Mrs. Porter, and released only on cognizance of a bond in the amount of Ten Thousand Dollars ($10,000.00). This action still pends.

In the meantime, litigation in Cause No. 55179 continued between Mrs. Porter and Intervenors. Despite the pleading of the Idaho judgment by both Mrs. Porter and Intervenors, Judge Stanford refused to admit such judgment into evidence on trial of the case, and refused to grant any effect to the deeds and release of judgment executed by Mrs. Porter, which instruments were properly offered into evidence by the Intervenors.

Prior to the judgment of the trial court, the Intervenors, in January of 1962, applied for an alternate writ of prohibition from the Arizona Supreme Court, pleading the fact of the Idaho judgment and its res judicata effect as to *all* its terms, rather than isolated terms, and requesting that the lower court be restrained from further action affecting the hotel property at issue. Duly authenticated copies of the Idaho judgment and the deeds were incorporated in the Petition*. After a hearing and oral argument on the matters pleaded, the Arizona Supreme Court's judgment* was entered on January 30, 1962, which stated: "The Court, being fully advised in the premises, ordered that the Petition for an Alternative Writ of Prohibition be denied."

In the meantime, the trial court directed the jury to return a verdict for Mrs. Porter and the judgment* against the Intervenors issued January 24, 1962, by which judgment the benefits to Mrs. Porter of the Idaho decree were established, and the deeds and benefits to the Intervenors by virtue of the same decree, were implicitly denied. The effect of the judgment is to grant to Mrs. Porter the entire Arizona Hotel property, in direct derogation of both Petitioner's and Intervenors' rights as awarded by the divorce judgment of the domiciliary State of Idaho.

On February 8th, Petitioner herein, who had yet to be served in the Arizona action, and who had never appeared therein, sought a writ of certiorari in the Arizona Supreme Court to review the judgment of the trial court, such remedy being the only one available to Petitioner under Arizona procedural law. In this application*, Petitioner's sole grounds for relief were based on the

formally pleaded and cited clauses of the U. S. Constitution set forth above, i.e. Article IV, Sections 1 and 2, and Amendment XIV, Section 1, respecting full faith and credit, equal protection, and due process. Incorporated into the Petition were both the Idaho judgment and the deeds of conveyance by Mrs. Porter, as well as all other instruments reprinted in the Appendix. At an informal hearing of February 20, 1962, oral arguments on the merits were presented by the Messrs. Wilson, attorneys for Mrs. Porter, and counsel for Petitioner. The Arizona Supreme Court then entered a decree* almost identical to that one quashing the Intervenors' application for a writ, the court stating that it was fully advised in the premises and ordering that the Petition for the writ of certiorari be denied.

It is from this judgment Petitioner seeks review in this court, the Arizona Supreme Court having granted Petitioner a stay of execution of the trial court judgment below for the purpose of allowing Petitioner to file this Petition.

REASONS FOR GRANTING THE WRIT

I.

The Protection Of Full Faith And Credit Has Been Weakened For Fifty Years By The Effects Of Fall v. Eastin And A Reappraisal Of Recognition To Foreign Land Decrees Is Overdue And Necessary.

In 1909 this court's predecessors determined the well-known cause of *Fall v. Eastin*[1], in an opinion which has ever since represented the definitive negation of the premise of full faith and credit to foreign land decrees. The decision has not been condusive to serene coexistence among the state courts, it has diluted the dynamic strength of res judicata principles, and it has effected a vulnerable and precarious thinness in the protective power implicit in the superb concept of full faith and credit.

[1] 215 U.S. 1 (1909).

Now, in 1962, our state courts have struggled for over half a century with the effects of that decision, either in futile attempts to reconcile logic and equity with results dictated by the *Fall* case, or by conscientious efforts to escape its effects through distinctions more chimerical than tenable. The prevailing situation is one of confusion and distress, and it is counsel's belief, submitted with all possible deference, that the inequities and inconsistencies of the state court decisions, in cases which involve a fundamental problem of constitutional law, are prodigal evidence of the critical need for this court's re-evaluation of the issue of full faith and credit to foreign land decrees.

When the orderly operative force of a precept as transcendent as that of the full faith and credit clause is held to be subject to a conspicuous exception, clearly there must be strong justification for the divergent rule; and when the exception not only discountenances the broadening protection of the Constitution, but creates an irreconciliable obstacle to the natural growth of the invaluable res judicata principle, the reasons for divergence must be doubly cogent and compelling. The problem before this court would be, then, to ascertain the value and validity of any reasons which purport to underly the rule by which full faith and credit is denied to foreign decrees pertaining to land at the situs, and by which the force of res judicata becomes suddenly impotent.

In *Fall v. Eastin*, in which a Washington decree ordering a conveyance was held to be undemanding of conclusive effect as to third parties at the situs of Nebraska, the majority opinion of Mr. Justice McKenna reflected his obvious uneasiness with the final determination, and he set forth persuasive argument against it, saying that an opposite results might be "plausibly sustained"[2]; unfortunately, Justice McKenna concluded that *authority* dictated the actual result of the *Fall* case, a conclusion that is nerve-wracking to contemplate because it is an unhappy and badly confused error.

[2] 215 U.S. 1, 11 (1909).

In reaching this peculiar deduction, Justice McKenna failed to exercise worthy discrimination in his selection of supporting authority. The cases he relied on were patently distinguishable, and not one was inconsistent with the premise that claims to land under a foreign decree should be enforceable, as between the parties, through an action brought at the situs. He cited other cases that validly sustained the logic of that premise, but failed to use them appropriately.[1] In leaning primarily on the case of *Watts v. Waddle*,[2] and inferring from it that no action at the situs is possible to enforce claims to land under a foreign decree, Justice McKenna erred profoundly, and in so doing relied on *Watts v. Waddle* to establish a proposition that was in direct and specific contradiction to the reason controlling the *Watts* case. There, the court held the plaintiff's title to certain lands was invalid *because* he had failed to invoke equity in Ohio to secure enforcement of a Kentucky decree awarding him the land. Instead, he had brought a suit for specific performance against a potential vendee of the land who refused to consummate the contract until title and patent were clear, without first acquiring clear title by establishing his right to it through enforcement of the Kentucky decree in Ohio, in an independent action against the defendant of the Kentucky suit.

Yet that holding was interpreted by Justice McKenna to indicate enforcement of the foreign land decree was not legally tenable, and that faulty conclusion has created a miasma of ambiguity and unreasoning theory which has haunted case law for over fifty years.

Obviously, faulty inception does not negate a rule's value if there are strong additional reasons, independent of precedent, for abiding by it. There are, seemingly, two other reasons most frequently raised in support of the rule which denies enforcement of

[1] Watts v. Waddle, 6 Pet. (U.S.) 389 (1832); Watkins v. Holman, 16 Pet. (U.S.) 25 (1842); Corbett v. Nutt, 10 Wall. (U.S.) 464 (1870); Hart v. Sansom, 110 U.S. 151 (1884); Carpenter v. Strange, 141 U.S. 87 (1891).

[2] Burnley v. Stevenson, 24 Ohio St. 474, 16 Am. Rep. 621 (1873); Dull v. Blackman, 169 U.S. 243 (1898); Laumeroy v. Lum, 210 U.S. 230 (1908); 6 Pet. (U.S.) 389 (1832).

foreign land decrees: One is the ghostly shade that equity acts only in personam; the second is the old chauvinistic theory that such a rule is necessary to perpetuate overriding policy factors that may obtain in the situs state.

It is firmly submitted by counsel that neither of these reasons can safely endure any examination on the merits, and that considered by any criterion of contemporary jurisprudence and the increasingly progressive interaction within our federal system, such theories lack even superficial impressiveness.

Domestic equity decrees have long been granted a res judicata effect; courts uninhibitedly order the conveyances of foreign land by defendants before them, in the somewhat optimistic belief their orders will be honored without reserve; and equity decrees for money are the basis of actions at law in sister states, by virtue of full faith and credit, in cases where alimony is ordered. It is possible, indeed, to speculate that no radical of legal powers has been expanded and extended as quickly, in recent decades, as has the power of equity, and to deny its unusual abilities is to embrace legal reaction with a blind vengeance.

As to the matter of a state's sovereign policy being violated by the act of allowing a plaintiff to bring an action to enforce a foreign land decree, such a contention must perforce dissolve before the obvious and inescapable fact that all the states recognize and respect deeds, themselves, executed pursuant to an equitable decree, as creating an obligation to convey, and the states have not experienced any detectable damage to what appears to be rather vague notions of "sovereign policy" toward domestic land. Declaring that policy is damaged by the predicate of the executed deed, but not by the deed and its obligatory effect, is a queerness that might have appealed to Lewis Carroll, but which has primarily served to disconcert careful judges faced with rationalizing the idea.

Professor Brainerd Currie, of the University of Chicago Law School, has incisively commented: " . . . the Constitution does not

say that full faith and credit shall be given to conveyances; but the only way to discredit the deed is to plead duress and when the compulsion is identified as that of the decree of a court of competent jurisdiction, having power over the defendant, the plea can be sustained only if credit is refused to the decree. In this context the terms 'in rem' and 'in personam' have been bandied about with discouraging results, but it can hardly be maintained that the decree in this instance (when it does no more than address a command to the defendant, which the defendant obeys) operates otherwise than in personam. It follows that full faith and credit requires recognition of the validity of the deed, and that there is no way of escape from the dilemma except by recognizing the decree where there is no deed."[4]

As a final comment on this particular reason for denial of full faith and credit to foreign land decrees, counsel would submit that whatever virtue may attach domestically to the value of a state's internal policy, that policy cannot but be subordinated to the federal expedient of full faith and credit when that surpassing concept is, of itself, dedicated to the enhancement of domestic policy of the individual state, through the command that judicially translated policy be respected and obeyed in all other states of the Union.

In their conscientious efforts to adhere to the elementary principles of res judicata and to avoid the injustices that are possible by invoking the thesis of *Fall v. Eastin*,[5] many state courts have willingly employed an ingenious escape by employing an estoppel principle, whereby one who seeks rights in land in a foreign court, and loses, is deemed to be estopped from relitigating his claim at the situs[6], (a procedure, it is to be noted, which negates the illusion that equity cannot create rights in foreign land).

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[4] Currie, Full Faith and Credit to Foreign Land Decrees, 21 U. of Chi. L. Rev. 620, 631 (1954). (Counsel gratefully acknowledges a great debt to Professor Currie for the instructive insight provided by this superb article.)

[5] 215 U.S. 1 (1909).

[6] Norton v. House of Mercy, 101 Fed. 382 (C.A. 5th, 1900); MacDonald v. Dexter, 85 N.E. 209, 234 Ill. 517 (1908); Niles v. Lee, 135 N.W. 274, 169 Mich. 474 (1912); Roller v. Murray, 76 S.E. 172, 71 W. Va. 461 (1912); Hall v. Jones, 54 S.W. 2d 835 (Tex. Civ. App., 1932).

Other courts, disinterested in semantic loopholes, have in recent years simply and wisely given foreign land decrees the full effect of res judicata[9], by open or tacit reliance on the full faith and credit clause, which is encouraging evidence that the states themselves are becoming increasingly aware of the need for full confidence in and reliance on the judgments of all other states.

It is respectfully submitted to this court that (1) the basic weakness of the rule of *Fall v. Eastin*, (2) the failure of independent considerations to justify that rule, (3) the acute and growing dissatisfaction of the states whose courts feel bound by that rule, and (4) the crucial value of the res judicata principles, which cannot develop normally while deterred by that rule, are all imperative elements of the great need for a new principle of law to be established. The writ of certiorari is requested of this court that it may grant the privilege of review to the question of foreign land decrees and the respect to be afforded them under the constitutional clause of full faith and credit.

II.

By Judgments In Which The Non-recognition Of Full Faith And Credit Was Implicit And Patently Necessary, The Courts Of Arizona Have Directly Refused To Afford Petitioner The Protection Of The Federal Constitution.

The Supreme Court of Arizona, the highest court of that State, has refused to the Intervenors a writ of prohibition in which they

[9] Burnley v. Stevenson, 24 Ohio St. 474, 16 Am. Rep. 621 (1873); Dunlap v. Byers, 67 N.W. 1067, 110 Mich. 109 (1896); Mallette v. Scheerer, 160 N.W. 182, 164 Wis. 415 (1919); Matson v. Matson, 173 N.W. 127, 186 Iowa 607 (1919); Rozan v. Rozan, 317 P.2d 11 (Cal. App., 1957); Valley Nat. Bank of Phoenix v. Siebrand, 243 P.2d 771, 74 Ariz. 54 (1952). (The Arizona case so held, statedly, because no policy considerations of the forum were at stake in this instance.) McCune v. Goodwillie, 102 S.W. 997, 204 Mo. 306 (1907); Greer v. Greer, 189 S.W. 2d 104 (Tex. Civ. App., 1945). Simmons v. Superior Court, 214 P.2d 844, 64 C.A. 455 (1950); Barber v. Barber, 331 P.2d 628 (Cal. App., 1958); Zentsis v. Zentis, 158 N.W. 284, 163 Wis. 342 (1916).

pleaded that the Idaho judgment be held to be res judicata, of all issues litigated therein, in the proceedings incident to the separate maintenance action in Arizona, which pended in the trial court below. The Intervenors had correctly presented the Idaho judgment in the trial court below, and Mrs. Porter, herself, asked that the judgment be held to be res judicata insofar as it awarded benefits to her, despite which facts the trial court had refused to allow the judgment to be entered into evidence on trial of the case. In the Supreme Court, the Intervenors again pleaded the Idaho judgment and a duly authenticated copy was incorporated into their petition. After a hearing at which the merits, as well as procedure, were argued, the Arizona Supreme Court denied the writ.

Petitioner's own application for a writ of certiorari, immediately thereafter, pleaded the sole issue of full faith and credit, correctly incorporated the Idaho judgment into the Petition, and was not assailable on state procedural grounds, for certiorari was the only remedy available to him. No state procedural or substantive grounds were raised or considered.

Again the plea of full faith and credit was denied, the Court repeating its earlier refusal by stating that it was fully advised in the premises presented and did, therefore, deny the writ.

It was the contention of Petitioner therein that the Superior Court was without jurisdiction to entertain further proceedings concerning the hotel property, by reason of the Idaho divorce judgment, wherein the jurisdiction of the Arizona court had been litigated and found imperfect, and that if full faith and credit were *granted to the Idaho decree in toto, the issue of jurisdiction, itself,* became res judicata, and precluded the Superior Court from exercising jurisdiction which continued to be imperfect. In support of that contention Petitioner pleaded the federal Constitutional clauses of full faith and credit, due process and equal protection.

The only issue before the Arizona Supreme Court, then, on Petitioner's application for a writ of certiorari, was whether full faith and credit demanded that the trial court below concede it was

without jurisdiction by reason of the res judicata effect of the Idaho judgment, when the Idaho court had litigated and determined that issue.

As has been stated countless times by the Arizona Supreme Court, and as is stated specifically in *Welker v. Stevens*, 311 P. 2d 832, 834, 82 Ariz. 233 (1957), regarding certiorari:

> "Its sole function is to determine whether the inferior tribunal acted either without or in excess of its jurisdiction."

The Arizona Supreme Court, by its denial of the writ of certiorari, and being fully advised in the premises, as it stated, effectively denied the force of full faith and credit under the federal Constitution, for the decree of denial could not have been issued unless the court had determined that the inferior court *did* have jurisdiction, and that full faith and credit did *not* result in the Idaho decree being res judicata on the issue of jurisdiction and precluding the trial court from exercise of jurisdiction.

Insofar as the Intervenors' petition in the Arizona Supreme Court is concerned, the federal constitutional clauses, *per se*, were not cited, but the plea of res judicata clearly involved the acceptance of the Idaho decree by full faith and credit[1]; and Petitioner's own application expressly set up and claimed under the federal Constitution. In that regard, this Court has said:

> "As a general rule, it is true that for the purposes of review by this court's rights under the full faith and credit clause, § 1, article 4 of the Constitution, come within that class which are required to be expressly set up and claimed in the court below. Let it be conceded, as we think it must be, where the record leaves no doubt that rights under the full faith and credit clause were essentially involved and were necessarily passed upon, there would be jurisdiction to review even although such rights had not been expressly asserted below (see Tilt v. Kelsey [N. Y. 1907] 207 U. S. 43, 51 52 L. Ed. 95, 99, 28 S. Ct. 1); the right to review under such condition being in effect but a result of the elementary rule that it is irrelevant to inquire how and when a federal question was

[1] Riley v. New York Trust Co., 315 U.S. 343 (1942).

raised in a court below when it appears that such question was actually considered and decided." Manhattan Life Ins. Co. v. Cohen, Tex. 1914, 34 S. Ct. 874, 234 U. S. 123, 58 L. Ed. 1245.

This court has also held, in cases whose citations fill nearly a full page of *United States Code Annotated*, that this court may accept jurisdiction on writ of error to the highest court of a state in which a decision could be had, in circumstances where,

> " . . . it must appear affirmatively not only that a decision by the highest court of the state having jurisdiction but that its decision was necessary to the determination of the cause, that it was actually decided, *or that the judgment as rendered could not have been given without deciding it* . . . "

(*Williams v. Oliver*, Md. 1851, 53 U. S. 111, 12 How. 111, 13 L. Ed. 915.) That this is a true test of this court's jurisdiction is too well known to this court to necessitate the citing of the dozens of cases supporting the proposition.

The highest court of Arizona, it is respectfully submitted, by its denials of writs of prohibition and certiorari to parties who were attempting to invoke full faith and credit to the same Idaho judgment, has twice denied a right set up and claimed under the Constitution, by decisions on the federal question which were necessary to determination of the causes pleaded, and that could not have been given unless such federal questions were decided.

III.

Petitioner Is Absolutely Precluded From Any Other Remedy In The Courts Of Arizona And Is Thereby Forced Into A Legal Limbo Of Severe And Demonstrable Hardship.

That no relief whatsoever is available to Petitioner in the courts of Arizona is an unassailable argument.

The original trial court judgment for Mrs. Porter, in the separate maintenance action, in which Petitioner was not personally served and did not appear, was taken in default of him by the

Maricopa Superior Court of Arizona in May, 1959. In that same month the divorce action at the domicile, Idaho, was instituted by Petitioner, in which suit all matters pertinent to the separate maintenance judgment, as well as the divorce, were pleaded by Mrs. Porter, appearing personally and by counsel, for consideration and adjudication in the Idaho court, which obviously precluded Petitioner from trying to set aside the default judgment of Arizona and adjudicating the identical issues then being heard in Idaho.

By the time the Idaho divorce judgment was granted Mrs. Porter by her counterclaim, and all matters of the prior separate maintenance judgment adjudicated by the Idaho court, there was neither reason for Petitioner to believe it necessary to take further action in Arizona on the default judgment, nor was there legal theory to support any such contemplation, since the Idaho court had held the judgment void insofar as it affected incidents of the divorce settlement, had reimbursed Mrs. Porter for the support of herself and children during the separation period by terms of a court order, and had enjoined her from pursuing litigation in Arizona.

Furthermore, Petitioner was reluctant to enter an appearance in the Arizona trial court. That court had never had jurisdiction of Petitioner's person, and such fact had been litigated and determined by the court of his domicile, Idaho, on evidence and argument submitted by Mrs. Porter and counsel, and by Petitioner and counsel. Belatedly appearing in the trial court of Arizona, even to contest the court's jurisdiction through an attempt to establish the Arizona judgment defensively, presented an incalculable risk to Petitioner that considerably more complex litigation, than he then thought necessary, would arise. If it is the rule[1] that Petitioner's appearance to contest jurisdiction would be held an appearance for all purposes, and the Arizona court refused to heed the Idaho decree and litigated and determined its jurisdiction had always existed, or was now "cured" retroactively by virtue of the late appearance, an appeal to this court was definitely forseeable, a complication and

[1] Restatement, Conflict of Laws, §451, pp. 540-541.

extension of litigation Petitioner devoutly hoped to avoid. It is submitted, with considerable restraint, that the record is ample evidence that ascertainable prejudice has existed in the courts of Arizona against Petitioner and Intervenors, and that Petitioner was justified in the pessimistic anticipation that the issue of jurisdiction would be insistently relitigated and that the Idaho decree would not be honored by Respondent, except as the decree benefitted Mrs. Porter, despite the fact it was a decree of the domicile from a court in which Mrs. Porter voluntarily appeared, and despite the fact Arizona has given full faith and credit even to foreign land decrees prior to this case.[2]

That by the subsequent action of the Intervenors in the Arizona trial court, Petitioner ultimately found himself in a situation almost as complicated, before he had time to determine how to institute properly a suit to establish the divorce judgment of Idaho in Arizona, was not a forseeable circumstance, unfortunately.

After the Idaho divorce judgment of December, 1961, the separate maintenance proceedings in Arizona pended only as between Mrs. Porter, as defendant in intervention, and the Intervenors, as plaintiffs in intervention, despite the critical interest of Petitioner, himself, in the Intervenors' attempted establishment of the Idaho judgment. The judgment of the trial court in those proceedings issued in January, 1961, and was directed solely to Intervenors, in favor of Mrs. Porter.

By Arizona case law, reiterated as recently as 1961 in *Horne v. Superior Court*, 361 P. 2d 547, 89 Ariz. 289,

> "No appeal can be taken from default judgment of the Superior Court until defaulting party has first moved to set aside the default judgment. 16 A. R. S. Rules of Civil Procedure, Rule 60(c)."

Under the rule cited by the court, however, Petitioner was precluded from moving to set aside the default judgment against him after the lapse of one year from the date of the judgment taken in

[2] Valley Nat. Bank of Phoenix v. Siebrand, 243 P.2d 771, 74 Ariz. 54 (1952).

default of him in May of 1959. The rule of 60(c) of *Arizona Rules of Civil Procedure* is set forth as follows:

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an action to relieve a part from a judgment, order, or proceeding, or to set aside within one year a judgment obtained against a defendant not actually personally notified."

Therefore, no appeal could be taken by Petitioner from the judgment of the Superior Court of Arizona, after May of 1960, since he needs must have moved to set aside the judgment within the year between May of 1959 and May of 1960, and it was not possible to anticipate the necessity of such action prior to May of 1961 when Mrs. Porter filed her Answer and Counterclaim to the Intervenors' Supplementary Complaint and it became apparent Mrs. Porter intended to deny the efficacy of the deeds and release of judgment which she had executed, and to deny the validity of the Idaho divorce decree insofar as it affected the Arizona Hotel property.

By the same token, that of Petitioner's status as a defaulting Defendant, it is impossible for Petitioner to appeal from the Superior Court judgment directed to the Intervenors and Mrs. Porter, but even if such right existed, it would have only technical value, since Petitioner's only possible plea is to establish the Idaho judgment by virtue of full faith and credit, and both the Superior and Supreme Courts of Arizona have made eminently clear that they will give full faith and credit only to such parts of the decree which benefit Mrs. Porter, but will not honor the portions of the decree which adjudicated the matter of Arizona's imperfect jurisdiction in the prior separate maintenance suit and which ordered

the conveyances executed by Mrs. Porter, even though the deeds were actually executed and in evidence in the trial court.

After the Superior Court judgment against Intervenors, which issued in January of 1961, Petitioner then sought the only remedy available to him in Arizona, a writ of certiorari from the Supreme Court, the highest court of Arizona, asking that the trial court be required to give full faith and credit to the Idaho divorce judgment, and expressly pleading the appropriate constitutional clauses. The denial of the writ was depressingly predictable, in view of the Supreme Court's immediately-previous refusal of the Intervenors' application for a writ of prohibition, by which they, too, had sought to secure full faith and credit to the Idaho judgment, but Petitioner, being precluded from right of appeal, had no recourse but to apply for the only extraordinary writ available to him after entry of judgment in the Superior Court below.

Added to Petitioner's injury by lack of remedy in Arizona, is the extreme hardship of Petitioner's circumstances as they pertain both to his financial condition and his inescapable harassment from added lawsuits filed by Mrs. Porter. It will be noted from the Idaho decree of divorce that Mrs. Porter was granted alimony and support totalling $1,400.00 per month, and was granted all the property belonging to the community (with one exception), including realty and a home valued at One Hundred Twenty-five Thousand Dollars ($125,000.00), Petitioner's insurance, valued at One Hunred Thousand Dollars ($100,000.00), all stock of the community, automobile, personal effects, etc. Petitioner was awarded his separate property of one automobile and personal effects, and the one other asset of the community, the interest in the partnership of the hotel property in Arizona. That single asset of Petitioner has now been the subject of litigation for nearly four (4) years, during which time it has yielded no income to Petitioner, but has been subject to charges for Mrs. Porter's support, at the behest of the Arizona courts in recent litigation. Petitioner is, therefore, almost completely without funds to defend himself in the endless litigation in progress, and, to make matters all but unendurable,

has been made Defendant to charges of contempt brought by Mrs. Porter against him in Idaho, of which Petitioner was found innocent, and has since been made Defendant in a third suit, in the same Maricopa Superior Court of Arizona (Cause No. 132632), being prosecuted against him by Mrs. Porter, in which she again seeks to litigate matters of both the Arizona and Idaho judgments, that are identical to matters already being litigated in Cause No. 55179. As incident to Cause No. 132632, Petitioner was jailed on the strength of a ne exeat writ secured by Mrs. Porter, and forced to post bond in the amount of Ten Thousand Dollars ($10,000.00).

As was pointed out by the Judge of the Idaho court, in the findings in the contempt proceedings, Mrs. Porter knows that the Arizona Hotel property is normally Petitioner's main source of income, and she has defied the Idaho court's injunction by militantly prosecuting Petitioner in every way possible to defeat the divorce court's award of that one asset to Petitioner.

Petitioner's position is simply stated: He is without remedy in the courts of Arizona, he is without property or money by reason of the action of Mrs. Porter and the Arizona courts, and he is without protection of any kind from the courts of Arizona insofar as the harassing litigation by Mrs. Porter is pursued, for her own position has been inexplicably supported by the Arizona courts at every turn.

IV.

The Decision Of The Arizona Supreme Court To Deny Petitioner's Constitutional Claims Is Effectually Irrevocable.

Undeniably, the proceedings in this case are not at an end in Arizona. The Intervenors in the original suit of separate maintenance are entitled to take an appeal to the trial court judgment of January 24, 1962, which judgment directed a verdict for Defendant in Intervention, Mrs. Porter (who was Plaintiff in the

main cause of action as against the Intervenors. The Intervenors have filed notice of their intent to perfect an appeal of this independent judgment, and by that appeal they will again attempt to secure full faith and credit to the Idaho judgment of divorce by the Arizona courts, the precise objective sought by Petitioner's plea now before this court.

Notwithstanding these facts, it is the contention of counsel that the judgment here presented for review is a final judgment within the meaning and the spirit of 28 U. S. C. § 1257 as that statute has been interpreted in the past.

1. The federal question has been properly presented to the highest court of Arizona.

Petitioner's application to the Supreme Court of Arizona for a writ of certiorari formally cited the federal law on which he based his claim of right, i.e. Article 4, Sections 1 and 2, and Amendment XIV, Section 1, of the U. S. Constitution, and his contention therein, as to the incompetent jurisdiction being exercised in the trial court below, relied not only substantially, but wholly, on the dictates of those clauses. The sole argument of Petitioner before the Arizona appellate court was composed of his objection to that jurisdiction, by reason of the Idaho judgment which decreed that the Idaho court had litigated and determined that the Arizona trial court did not have jurisdiction in the separate maintenance action, and his claim that full faith and credit required Arizona to take cognizance of that finding and of the orders of conveyance, that the guarantee of the privileges and immunities clause required that Petitioner be granted his rights under the Idaho judgment, and that the due process clause insured him against having such privilege and or immunity abridged by the State of Arizona, or from having his property taken without due process of law, or from being denied the right of equal protection. Petitioner neither presented nor contended any other claim except those embodied in the federal law cited, he did not plead any state grounds to support his claim, and no state grounds were ever raised or argued before the Arizona Supreme Court.

Furthermore, the Arizona Supreme Court had already been faced with the federal question presented by the same Idaho judgment in the trial court, when it denied the application of the Intervenors for a writ of prohibition, in proceedings that had occurred less than a month previously. In that petition, the Intervenors had pleaded that the principles of res judicata demanded that the Arizona trial court respect the determinations of the Idaho court, as reflected by its properly introduced judgment, and that if such respect were accorded, the jurisdiction of the trial court could not be sustained. The trial court record will show that Intervenors specifically asked that the trial court resolve the federal question of full faith and credit, although the Intervenors did not formally plead the constitutional clauses relied on in the Arizona appellate court. This court has held, however, that the plea of res judicata, in connection with the judgment of a foreign state, will be deemed to raise the federal question (*Riley v. New York Trust Co.*, 1942, 315 U. S. 282), and it is respectfully submitted by counsel that examination of the petition of the Intervenors allows of no other interpretation than that they sought full faith and credit to the Idaho judgment.

2. The wrongful determination of the federal question of full faith and credit was irrefutably necessary to the Arizona Supreme Court's denial of the writ of certiorari sought by Petitioner.

This court has held, on innumerable occasions, that the judgment of the highest court of the state must indicate, for purposes of finality, that the federal question was considered and determined, or that the judgment, as rendered, was one to which a determination of the federal question was clearly necessary. (*Hammerstein v. Superior Court of California*, 1951, 341 U. S. 491.) The court has also held that if no independent state grounds support the decree of the court below, it will be presumed that the state court based its decision on the federal grounds (*Williams v. Kaiser*, 1945, 323 U. S. 471; *National Ass'n. for Advancement of Colored People v. State of Ala.*, ex rel. Patterson, 1958, 357 U. S. 449.),

and further, the denial or granting of a writ has been deemed a final judgment, for purposes of this court's jurisdiction, in instances where the state court's decree has the obvious effect of denying a right claimed under federal law, even though the decree issued without opinion. (*Madruga v. Superior Court of Calif.*, 1953, 346 U. S. 556, *Rescue Army v. Municipal Court of City of Los Angeles*, 1947, 331 U. S. 549; *Michigan Central Co. v. Mix*, 1929, 278 U. S. 492).

In the present instance the denial of Petitioner's application for a writ could not have issued unless the federal claim were denied, for had the Arizona appellate court sustained Petitioner's only grounds of defense, the decree must necessarily have held the jurisdiction of the lower court to be incompetent, and the appellate court could not have allowed the trial court judgment to stand. The appellate court had no questions of state law to consider. Petitioner's right to apply for the writ of certiorari was unquestioned in view of his lack of right to appeal and in view of the fact the writ of certiorari was the only one available to him to test jurisdiction of the lower court, by Arizona procedure, as has been cited earlier, and in denying the writ, the Arizona Supreme Court was literally forced to decide whether or not full faith and credit were to be granted the Idaho judgment. It is again remarked by Petitioner that the Arizona court had already denied the effect of full faith and credit by its prior refusal of a writ to the Intervenors, which would seem to be clearly indicative of the appellate court's tacit opinion of the merits of the issue, particularly when the federal question was orally argued at considerable length in both hearings. It will be noted that both decrees of the Arizona Supreme Court state explicitly that the court was "fully advised in the premises."

In the *Rescue Army* case, supra, and in *Bandini Petroleum Co. v. Superior Court*, 1931, 284 U. S. 8, this court held that the result of a prohibition proceeding, which effectually tested a jurisdictional question to which the decision of a federal question was necessary, was a final judgment for this court's purposes, if the constitutional issues had been raised in clean cut and concrete

form; it is counsel's contention that in the case here at issue, the federal questions were clearly presented, in an effort to test the jurisdiction of the trial court of Arizona, and that the appellate decision by which that jurisdiction was sustained is a patent denial of the federal claim of Petitioner.

In *Pope v. Atlantic Coast Line R. Co.*, 1953, 345 U. S. 379, this court held that it was not bound to determine presence or absence of finality from a mere examination of the face of the judgment, since the jurisdictional statute does not preclude a review of federal questions which are ripe for adjudication when tested against the policy of such statute. If the policy of the statute is directed primarily to affording protection to rights validly claimed under federal law, when no other protection is available, it is earnestly submitted by counsel that the present case is worthy of this court's attention at this time. The Arizona courts have shown clearly, both at the trial and appellate levels, that they do not deem the Idaho divorce judgment one requiring full faith and credit by Arizona, despite the fact parts of its terms have been established as a basis for the judgment of Mrs. Porter in the trial court, and despite the academic right of appeal in the Intervenors, who have no substantive issue that can be offered in their defense on appeal except the issue of full faith and credit. By the same token, Petitioner is without any hope of protection from Arizona, both because he has no other remedy and because, in any event, he has no defense other than the sole one propounded under Article 4, Section 1, of the Constitution. Since the Arizona appellate court has decided this issue twice, in separate proceedings, and given adverse decisions on the federal question against Intervenors and Petitioner, such determinations will surely be reflected by the same court when they again face the question on Intervenors' appeal; the decision as to Petitioner will conceivably be held to be res judicata as to Intervenors, and most certainly the appellate court will be guided by the doctrine of stare decisis in their third determination of a question twice answered in progeedings to which identical persons

were originally parties, and whose interest is basically identical. (*Hoff v. City of Mesa*, 1959, 344 P.2d 1013, 86 Ariz. 259.)

3. There is nothing more to be decided by the courts of Arizona.

This court has granted certiorari when "there is nothing more to be decided," and the federal issue is the controlling question. (*Clark v. Willard*, 1934, 292 U. S. 112; *Pope v. Atlantic Coast Line R. Co.*, supra.) There is nothing more to be decided, substantively, in the case at issue, for the controlling federal question has been decided already and the determination conclusively precludes Petitioner from establishing the Idaho judgment in Arizona under the claim predicated on federal full faith and credit; and it is submitted that by the principles of res judicata and stare decisis the determination will not be altered in the future. In the meantime, Petitioner is forced into a position of untenable hardship by being forced to wait idly for at least two years (currently the minimal time in which an appeal is heard in the Arizona Supreme Court), awaiting a repetitive decision of purely formalistic value which Intervenors feel they cannot safely afford to by-pass lest they sacrifice the possibility of invoking this court's jurisdiction in the far future; Petitioner freely concedes that the actions of the Intervenors in the separate maintenance proceedings and the divorce proceedings have been necessary to them, that they might protect their own rights in the hotel property at issue, but it is counsel's strong belief that the exigencies of this somewhat unusual situation, whereby the single substantial asset awarded Petitioner by the Idaho divorce court may be withheld from him for a possible total of at least six years by reason of independent actions, in circumstances where the question of law governing all claims is a federal question to which the highest court of a state has twice responded, by definitive denial of the constitutional rights, present a unique set of complications deserving of this court's consideration.

Presumably, Petitioner could institute a new suit in the Arizona courts to establish the Idaho judgment, but such action could only add to the current multiplicity of suits instituted by Mrs. Porter; all

suits would continue to be governed by the issue now before this court, i.e. the full faith and credit to be afforded the Idaho decree; and the judgments against the Intervenors in the proceedings auxiliary to the separate maintenance action, or against Petitioner, would again control a new suit by principles of stare decisis or res judicata, it is believed, despite the fact the judgment against Intervenors did not directly act against Petitioner.

The frustrations and uncertainty of this unconscionable predicament would appear to be conspicuous evidence of the basic bewilderment of courts faced with cases involving land and full faith and credit. The problems at issue, in all their extended confusion and complexity, are ones urgently requiring that the clarifying aid of this court direct their ultimate solutions.

CONCLUSION

This petition presents a federal question of preeminent importance in terms of constitutional principle; in terms of the natural development of established principles of res judicata, the question is equally vital; to petitioner the question is crucial. The substantiality of this inquiry is so definite, the complications of litigation are so unique, and the effect of the solution will be of such sweeping scope, that the problems presented are worthy of oral argument before this court, and of plenary consideration on the merits. Petitioner requests of this court the privilege of such a review.

Respectfully submitted,

STEPHEN W. LANGMADE
Attorney for Petitioner

May, 1962

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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961-2

No. ~~980~~ 176

WILLIAM A. PORTER,

Petitioner,

vs.

HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

STEPHEN W. LANGMADE
34 West Monroe
Phoenix, Arizona
Counsel for Petitioner.

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APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GLADYS E. PORTER,
Plaintiff,
vs.
ARNOLD PORTER,
Defendant.

PEARLINE PORTER and PAULINE P. LEONARD,
Plaintiffs in Intervention,
GEORGE C. KEMBLE,
Plaintiff in Intervention,
vs.
GLADYS E. PORTER,
Defendant in Intervention.

NO. 55179
JUDGMENT

THIS CAUSE COMING on regularly for trial before the Court sitting with a jury, and all of the Plaintiffs in Intervention's proofs and allegations having been duly presented and heard, and the court having thereupon directed a verdict upon the merits in favor of the Defendant in Intervention, GLADYS E. PORTER, and against the Plaintiffs in Intervention, GEORGE C. KEMBLE, PAULINE P. LEONARD and PEARLINE PORTER, and the jury having returned its verdict accordingly:

WHEREFORE, IT IS ORDERED AND ADJUDGED that Plaintiffs in Intervention GEORGE C. KEMBLE, PAULINE P. LEONARD and PEARLINE PORTER take nothing by their actions and that Defendant GLADYS E. PORTER have judg-

ment against Plaintiffs in Intervention and each of them for her costs incurred and expended herein, and that Defendant have execution therefore against the property of the Plaintiffs in Intervention and each of them.

DONE IN OPEN COURT this 24th day of January, 1962.

JUDGE OF THE SUPERIOR COURT

Approved as to form this day of

, 196

BEER, SEAMAN & POLLEY
Attorneys for Plaintiffs
in Intervention, PEARLINE
PORTER and PAULINE P. LEONARD
710 Luhrs Tower
Phoenix, Arizona

By
PAUL BEER

KRAMER, ROCHE, BURCH & STREICH
Attorneys for Plaintiff in
Intervention, GEORGE C. KEMBLE
First National Bank Building
Phoenix, Arizona

By
WALTER ROCHE

Copy of the foregoing Judgment received

this 29 day of December, 1961, by:

BEER, SEAMAN & POLLEY
Attorneys for Plaintiffs in
Intervention, PEARLINE PORTER
and PAULINE P. LEONARD
710 Luhrs Tower
Phoenix, Arizona

By .....

KRAMER, ROCHE, BURCH & STREICH
Attorneys for Plaintiff in
Intervention, GEORGE C. KEMBLE
First National Bank Building
Phoenix, Arizona

By .....
/s/ HARVEY E. STREICH

86 Ariz. 402

Pearline PORTER and Pauline P. Leonard,
Petitioners,

v.

Honorable R. C. STANFORD, Jr., Judge of
the Superior Court, Maricopa County,
State of Arizona, Respondent.

No. 6910.

Supreme Court of Arizona.

Dec. 2, 1959.

Original proceeding for a writ of prohibition to restrain the court from enforcing an order for payment of support money to a wife from property which petitioners alleged to be partnership property. The Supreme Court, Phelps, C. J., held that in a separate maintenance action, court, which had jurisdiction of the parties and subject matter of the litigation, had jurisdiction to enter an order in such amounts as it deemed proper for support of wife and minor children of the parties, pendente lite, and had jurisdiction to temporarily reduce the amount of support if the circumstances warranted it, and it also had authority not only to order the husband to pay the amount of support awarded pendente lite, but it also had authority to direct a receiver it had appointed in the separate maintenance action, for community property consisting of a hotel, to do so, notwithstanding the fact that two other persons claimed a partnership interest in such hotel.

Alternative writ of prohibition quashed.

Johnson, J., dissented.

1. Husband and Wife — 294, 295

In a separate maintenance action, court, which had jurisdiction of the parties and subject matter of the litigation, had jurisdiction to enter an order in such amount as it deemed proper for support of wife and minor children of the parties, pendent lite, and had jurisdiction to temporarily reduce the amount of support if the circumstances warranted it, and it also had authority not only to order the husband to pay the amount of support awarded pendente lite, but it also had authority to direct a receiver it had appointed in the separate maintenance action, for community property consisting of a hotel, to do so, notwithstanding the fact that two other persons claimed a partnership interest in such hotel.

2. Husband and Wife — 262(1)

Where complaint in separate maintenance action alleged that husband and wife owned certain described property on which a hotel was located as community property, and court in its decree found all the material allegations of the complaint to be true, and answer to application of two persons for a writ of prohibition to restrain court from enforcing order for payment of support money to wife from property of the hotel which petitioners alleged to be partnership property, alleged that deed of conveyance of the hotel to husband and wife was recorded, and such allegations stood undenied, presumption that the hotel was community property therefore obtained and would continue to prevail in the favor of wife until destroyed by evidence to the contrary.

—o—

Beer, Seaman & Polley, Phoenix, for petitioners.

Wilson & Wilson, Phoenix, and Jerry Giesler, Beverly Hills, Cal., for respondent.

PHELPS, Chief Justice.

The petitioners, Pearline Porter and Pauline P. Leonard, seek a writ of prohibition to restrain the respondent court and they

Honorable R. C. Stanford, Jr., one of the judges thereof, from enforcing an order for the payment of support money to Gladys E. Porter from the assets of property which petitioners allege to be partnership property. Following informal hearing alternative writ issued.

The facts are that on February 13, 1959, Gladys E. Porter commenced against her non-resident husband, William Arnold Porter, in the Superior Court of Maricopa County. The complaint described the Arizona Hotel property and alleged that it was the community property of the parties. Part of the relief asked by Mrs. Porter was that the court set aside a certain amount of the income from the Arizona Hotel to her for the support of herself and the minor children of the parties, and for the payment of attorneys' fees and court costs. Having perfected service upon her husband by publication, Mrs. Porter caused a writ of attachment to be levied by the sheriff upon the Arizona Hotel, February 17, 1959.

Thereafter, Pearline Porter and Pauline P. Leonard filed a motion to intervene, claiming an interest in the Arizona Hotel property. That motion being granted they filed their complaint in intervention February 25, 1959. By their complaint the petitioners (interveners Pearline Porter and Pauline P. Leonard hereafter referred to as petitioners) alleged that the Hotel property in question was not the community property of the Porters but was in fact the property of a partnership known as the Continental Hotel System; that William Arnold Porter was a copartner with them in that partnership; that Mrs. Porter's claim was not a claim against the partnership nor a claim against any specific partnership property; and that the attachment levied upon the property in question, therefore, did not create a valid lien in favor of Mrs. Porter. For relief, the petitioners asked that the attachment be removed and discharged.

By her answer to the petitioners' complaint filed March 31, 1959, Gladys Porter denied that any such partnership existed and alleged that the Arizona Hotel is not partnership property but

the community property of herself and her husband, alleged that her attachment was lawful, and admitted that her claim is not against any partnership.

Thereafter, on April 14, 1959 the court upon the motion of Gladys Porter made and entered its order appointing one M. E. Eubank as receiver of the Arizona Hotel property with the powers and duties of taking charge of managing and conserving it. Mr. Eubank qualified, posted bond and became the receiver on April 24, 1959.

On April 24, 1959, the court issued an order to Mr. Eubank to appear on May 8, 1959, to show cause why he should not pay Gladys Porter $3,000 per month for her support and the support of the three minor children, together with $5,000 as attorneys' fees pendente lite from the Hotel's proceeds. May 6, 1959, interveners moved the court quash the order to show cause.

A decree of separate maintenance was made and entered May 14, 1959. By such decree the court ordered and adjudged that Mrs. Porter is authorized to live separate and apart from her husband; that she receive $3,000 per month support and maintenance; that she have the care, custody, control and education of the minor children of the parties; that the attorneys' fee be fixed at $15,000; that she have a lien on all the community property for support under a pendente lite order in the sum of $10,200, together with attorneys' fees in the sum of $5,000 and court costs pendente lite; that any community interest of the parties in the Arizona Hotel be charged with the payment of the support to plaintiff; that the lien for payments pendente lite is to affix to any community interest in the Arizona Hotel; that she is to receive $10,000 for attorneys' fees and costs expended in this action.

Petitioners' motion to quash having been denied, hearings on the order to show cause were held on the following dates respectively: May 15, 1959; May 28, 1959; June 12, 1959; June 19, 1959 and June 26, 1959. During the June 19th proceedings the court made an order the pertinent parts of which follow:

Therefore, it is ordered that the interest of William Arnold Porter in the Arizona Hotel be charged with the payment of the support and maintenance of Gladys E. Porter, and the minor children, * * * and the payment of attorney's fees * * * * as heretofore ordered by this Court, in the Decree of Separate Maintenance. * * * *It is further ordered that until the issue of whether the Plaintiff and Defendant are the sole owners of the Arizona Hotel, or are partners with the Intervenors, Pearline Porter and Pauline P. Leonard, the Receiver, Mr. Eubank, shall pay to said Gladys E. Porter towards the support for herself and the minor children the sum of $1000 per month * * * on the first day of each month, commencing on the first day of July, 1959, and on the first day of each month thereafter until a further Order of the Court.*" (Emphasis added.)

The petitioners assert two grounds upon which this court should issue a writ of prohibition against the trial court. First, that the court was without jurisdiction to issue the order to show cause to Mr. Eubank as receiver of the Arizona Hotel. And second, that the court acted in excess of its jurisdiction in ordering him to make the payments in question pending the determination of the ownership of the Hotel property.

Petitioners raise the question of the jurisdiction of the court to issue the order to show cause directed at the receiver of the Arizona Hotel property appointed by the court in the separate maintenance action in which Gladys E. Porter was plaintiff and William Arnold Porter was defendant, and in which petitioners intervened as parties plaintiffs. Suffice it to say that said order to show cause was entirely superfluous.

We said in Sawyer v. Ellis, 37 Ariz. 443, 448, 295 P. 322, 324, that

"* * * Generally speaking, he (the receiver) is not an agent of any of the parties, but is merely a ministerial officer of the court. He stands in an indifferent attitude, not representing either the owners of the insolvent estate or the creditors, but

really representing the court in acting under its direction, for the benefit of all the parties in interest. The parties to the litigation have not the least authority over him, nor have they the right to determine what liability he may or may not incur; his authority is derived solely from the act of the court appointing him, and he is the subject of its order only. * * * Citing authority.

The court in the above case held that the court in a bank liquidation case has substantially the same power over the receiver as it had over a receiver in the ordinary insolvency case. The court in the instant case after due hearing had, entered insofar as here pertinent, the following order:

"* * * It is further ordered that until the issue of whether the Plaintiff and Defendant are the sole owners of the Arizona Hotel, or are partners with the Interveners, Pearline Porter and Pauline P. Leonard, the Receiver, Mr. Eubank, shall pay to said Gladys E. Porter towards the support for herself and the minor children the sum of $1,000 per month * * * on the first day of each month, commencing on the first day of July, 1959, and on the first day of each month thereafter until a further Order of the Court."

[1] It will be seen from what has been said above that the court had already fixed the sum of $3,000 per month for the support of Gladys E. Porter and the minor children of her and the defendant William Arnold Porter pendente lite, and for costs of court and attorneys fees of $5,000. It had jurisdiction of the parties and of the subject matter of the litigation and jurisdiction to enter an order in such amount as it deemed proper for their support pendente lite. The records show that several hearings were held pursuant to the order to show cause complained of above, and the amount was reduced to $1,000 as above shown.

The court likewise had jurisdiction to temporarily reduce the amount from $3,000 per month to $1,000 if the circumstances developed by the evidence warranted it. A.R.S. § 25-315 and A.

R.S. § 25-321. It also had authority not only to order the husband to pay such amount pendente lite but it also had authority to direct a receiver of the community property to do so. Nichols v. Superior Court, 1 cal.2d 589, 36 P.2d 380, 95 A.L.R. 894; Atkinson v. Superior Court, Cal.App., 310 P.2d 145, and Murray v. Murray, 115 Cal. 266, 47 P. 37, 37 L.R.A. 626.

[2] The second contention of interveners is equally as untenable as the first. The complaint of Gladys E. Porter v. William Arnold Porter is duly verified in the manner prescribed by statute and it alleges that plaintiff and defendant own as community property "Lots 1, 3 and 5 of Block 74, Original Townsite of Phoenix, according to the map and plat of record in the office of the County Recorder of Maricopa County, Arizona." This constitutes a legal description of the property upon which the Arizona Hotel is located. There was no answer to this complaint by defendant William Arnold Porter. The court in its decree found all of the material allegations of the complaint to be true. Therefore, insofar as he is concerned the issues therein determined are res judicata. The answer to petitioners' application for a writ of prohibition alleges that the deed of conveyance to this property to William A. Porter and Gladys E. Porter was recorded on July 9, 1948, in the office of the county recorder of Maricopa County, Arizona, in docket 241 at page 311 thereof. This allegation stands undenied. So far as the record before us is concerned there is no proof either that the property involved is not the community property of Gladys E. Porter and her husband or that it is the property of a partnership. The presumption that it is community property therefore obtains and will continue to prevail in favor of Gladys E. Porter until it is destroyed by evidence to the contrary.

The court had jurisdiction therefore both to fix her support at $3,000 and to reduce to $1,000 temporarily if it deemed such action proper.

The alternative writ of prohibition was improvidently issued and it is therefore ordered quashed.

STRUCKMEYER, UDALL, and BERNSTEIN, JJ., concurring.

JOHNSON, Justice (dissenting).

I am fully unable to agree with the decision of the majority and am firmly of the opinion that the result reached is contrary to the established law in this jurisdiction. First: As I view the majority opinion it is now the law in this state that individual creditors of members of a partnership can have the partnership assets applied in liquidation of their claims before an accounting is had of the partnership and before the creditors of the partnership are satisfied. Second: By virtue of the majority opinion it is now possible under A.R.S. § 25-321, to modify a final judgment without filing a petition seeking a modification, without service of process on the defendant and without the presentation of evidence showing a change in circumstances and conditions.

The majority decision correctly states the facts giving rise to this litigation, however, the record reveals additional facts which I believe are material to a correct answer to the problems involved, and these will be set forth in discussing the various issues.

The majority opinion comes to the conclusion that the Arizona Hotel property is the community property of Gladys E. Porter and William Arnold Porter, because Gladys E. Porter in her complaint for separate maintenance alleged that the Arizona Hotel was community property and that the trial court in the final decree made a finding that "all of the allegations contained in the complaint are true." The decree is silent as to any specific finding or conclusion that the Arizona Hotel property is community property, and as a matter of fact the court apparently declined to make such a conclusion, for we find this language in the decree entered on the 14th day of May, 1959:

> "* * * 5. That *any* community interest of the parties hereto in the Arizona Hotel, being Lots 1, 3 and 5 of Block 74, original townsite of Phoenix, according to the map of record

in the office of the County Recorder of Maricopa County, Arizona, is hereby charged with payment of the support to the plaintiff, and that the lien hereinabove set forth is to affix to an community interest in the Arizona Hotel." (Emphasis supplied.)

I cannot agree with the majority that merely because the trial court made a finding in the final decree of separate maintenance that all the material allegations of the complaint were true that this constituted an adjudication of the property rights of the parties. Such a finding is not a judgment, but merely the foundation for the judgment. This well established general rule of law is plainly stated in Higley v. Kinsman, Iowa, 216 N.W. 673, 676, as follows:

> "It is a well established rule that it is only the decretal portion of a decree that is binding and becomes res adjudicata. The recital of facts in a decree is usual and is proper, but the rights of the parties are adjudicated, not by the recital of facts, but solely by the decretal portion of the decree. It is this and this only that becomes the final judgment of the court, from which an appeal will lie." (Citing cases.)

The language used in Galiger v. McNulty, 80 Mont. 339, 260 P. 401, 403 is particularly pertinent on this matter: "A judgment does not reside in its recitals but in the mandatory portion of it." See also Holmes v. Holmes, 66 Wyo. 317, 211 P.2d 946.

I am therefore of the opinion that the trial court made no adjudication of the ownership of the Arizona Hotel, as the court's finding that "* * * all of the allegations contained in the complaint are true. * * *," was not followed by a corresponding provision in the decree that such property constituted community property of the parties.

Prior to the 14th day of May, 1959, when the decree of separate maintenance was entered the respondent court had issued an order to show cause to the receiver to appear and to show cause why he

should not pay to Gladys E. Porter, the defendant in intervention, an amount for her support and the support of the minor children and also a sum for attorney's fees, from the Arizona Hotel. In response the petitioners herein filed their motion to quash the order to show cause upon the grounds that it would be improper for the court to require the receiver of the Arizona Hotel property to pay the funds requested from property entrusted to him as receiver until a legal determination had been made as to whether the hotel property is the property of the partnership or the community property of William Arnold Porter and his wife, Gladys E. Porter. The respondent court denied the motion to quash.

The hearings on the order to show cause began on May 15, 1959, *after the decree of separate maintenance had been entered* and continued at various times until the 26th day of June, 1959. During the hearing of June 19, 1959, the following proceedings were had:

"Mr. Francis Wilson: I would like to ask you to clarify, or set the date, for the hearing on the determination of the ownership of the hotel.

"The Court: That matter, I am going to make some temporary orders to take care of things until then, *but the matter as ownership of the hotel is going to have to be tried out in the case in the main.*" (Emphasis supplied.)

This language of the trial court made after the date of the decree of separate maintenance, shows beyond any question of a doubt that the court did not finally determine or decree that the Arizona Hotel was community property of the parties. How, then when this question was not settled, can the majority decision hold that the decree of separate maintenance is res judicata as to the issue of the ownership of this property. This Court has stated in Manor v. Stevens, 61 Ariz. 511, 152 P.2d 133, 135, "* * * it is a fundamental precept of the law of res judicata that the questions raised by the issues, actually litigated and *determined by the*

judgment or decree are settled thereby, and the judgment or decree may be relied upon as an estoppel by any party against any other party * * *." (Emphasis supplied.)

At the conclusion of the hearing on the order to show cause on June 19, 1959, the court made the following orders:

> Therefore, it is ordered that the interest of William Arnold Porter in the Arizona Hotel be charged with the payment of support and maintenance of Gladys E. Porter, and the minor children, in the sum of $300/per month, commencing May 15, 1959, and the payment of attorney's fee in the sum of $5,000, as heretofore ordered by this Court in the decree of separate maintenance.
>
> Mr. Francis Wilson: You mean $3,000.
>
> The Court: Did I say, $3,000 for support money and $5,000 attorney's fees as set forth in the decree of separate maintenance. It is further ordered that until the issue of whether the plaintiff and defendant are the sole owners of the Arizona Hotel, or are partners with the interveners, Pearline Porter and Pauline P. Leonard the receiver, Mr. Eubank, shall pay to said Gladys E. Porter towards the support for herself and the minor children the sum of $1,000 per month on the 15th day of each month, commencing June 15th—no, make it on the first day of each month commencing on the first day of July, 1959, and on the first day each month thereafter until a further order of the court."

The petitioners herein objected to the making of the above order upon the ground that the Court, by the making of the order, was indirectly ruling that the Arizona Hotel was the community property of William A. Porter and Gladys E. Porter, and not the property of a partnership of which the petitioners were partners and that the ruling was in effect deciding this question in a summary manner rather than in a trial of the issues created by the petitioners' complaint in intervention and the answer of the defendant in intervention.

I am of the opinion that the respondent court exceeded its jurisdiction in entering the order requiring the receiver to pay to Gladys E. Porter support money from the assets of the Arizona Hotel in view of the complaint in intervention and answer thereto which were then at issue. The trial court had no jurisdiction to summarily determine the question of the ownership of the hotel. The reason is, that to make such an order directing the application of the property claimed by Gladys E. Porter would in effect be to deprive the petitioners herein of their property upon a summary proceeding and without due process of law. Miller v. Gregory, 82 Cal.App. 634, 256 P. 131; Takahashi v. Kunishima, 34 Cal.App.2d 367, 93 P.2d 645; the trial court should have refrained from making any order requiring the receiver to make payments to Gladys E. Porter, until the ownership and title to the hotel property was tried upon the complaint in intervention and a judgment regularly entered which would bind the parties thereto.

It is further stated in the majority decision that "* * * The presumption that it (Arizona Hotel) is community property therefore obtains and will continue to prevail in favor of Gladys E. Porter until it is destroyed by evidence to the contrary." I am definitely of the opinion that whatever presumption prevailed in favor of Gladys E. Porter that the hotel property was community property completely disappeared "in the sunshine of actual fact." Seiler v. Whiting, 52 Ariz. 542, 84 P.2d 452, 455; for at the hearing of June 19, 1959, the respondant court admitted in evidence a lease executed by Gladys E. Porter, leasing space in the Arizona Hotel, the preamble of which recited that the lessors, William A. Porter, Gladys E. Porter and the petitioners herein were partners; and as we said in the Seiler case "* * * The presumption, when the opposite party has produced prima facie evidence, has spent its force and served its purpose, and the party then, in whose favor the presumption operated, must meet his opponent's prima facie evidence with evidence, and not presumptions. * * *"

The net result of the majority opinion in upholding the action of the trial court in ordering the receiver to pay to Gladys E. Porter the sum of $1,000 per month for support of herself and minor children from the Arizona Hotel prior to an adjudication and a decree that such property was community property of William A. Porter and Gladys E. Porter, permits an individual creditor of a member of a partnership to have partnership property applied in liquidation of her claim before an accounting is had of the partnership and before the creditors of the partnership are satisfied.

Until an accounting is had it cannot be known what property will have to be used to satisfy the partnership creditors and what property will remain after the partnership creditors are satisfied which would be available for the protection of individual partners. Prior to that time a partner's interest in partnership property is subject to attachment or to levy under execution to satisfy a judgment against him individually as distinguished from a judgment based on a claim against the partnership itself. Sherwood v. Jackson, 121 Cal.App. 354, 8 P.2d 943.

This Court has decided in Olds Bros. Lumber Co. v. Marley, 72 Ariz. 392, 236 P. 2d 464, following the generally established rule, that members of a partnership have a right to have partnership assets applied in liquidation of partnership debts before any one of the partners or his individual creditors can claim any right or title to such assets.

I disagree with the statement in the majority opinion that the trial court had jurisdiction to temporarily reduce the amount of support money from $3,000 to $1,000 per month.

While this question was not raised by the pleadings in this court nor did the parties dispute the trial court's order reducing the amount of support money as provided in the decree of separate maintenance, nevertheless, the effect of the opinion of the majority is so contrary to our established principles of law that I feel constrained to take issue.

I concede that if Gladys E. Porter had petitioned the lower court for a modification of the decree of separate maintenance and had secured service, either personal or constructive, of said petition and notice of hearing, upon her husband, William A. Porter, then under the authority of A.R.S. § 25-321; after an appearance or default of her husband, and a hearing on the petition, the decree could be modified, assuming of course, that the court was satisfied from the evidence that there had been a change of circumstances and conditions since the entering of the original decree. Cone v. Righetti, 73 Ariz. 271, 240 P.2d 541, Burk v. Burk, 68 Ariz. 305, 205 P.2d 583 and Gotthelf v. Gotthelf, 38 Ariz. 369, 300 P. 186.

However, it appears from the record before this court that the respondent trial court, after the decree of separate maintenance had become final, and without any request or petition therefor and without any type of notice to or service upon the defendant husband, modified the judgment by reducing the amount of support money; entirely disregarding the provisions of A.R.S. § 25-321, which provides that: " * * * on petition of either party * * *", the final judgment may be modified. It is elementary that such final judgment cannot be modified without service of process, Article 2, Section 4, Arizona Constitution, A.R.S., and notice to the defendant, an opportunity to be heard and the presentation of evidence warranting a change in the original decree. None of these jurisdictional steps were taken—therefore the respondent trial court was completely without jurisdiction to modify the decree. McDonnell v. Southern Pacific Company, 79 Ariz. 10, 281 P.2d 792.

I would make permanent the writ of prohibition heretofore issued.

86 Ariz. 392

Geargе C. KEMBLE, Trustee Petitioner,

v.

Honorable R. C. STANFORD, Jr., Judge of the Superior Court, Maricopa County, State of Arizona, Respondent.

No. 6911.

Supreme Court of Arizona.

Dec. 2, 1959.

Rehearing Denied Jan. 5, 1960.

Original proceeding to prohibit respondent court from enforcing order. The Supreme Court, Phelps, C. J., held that where judgment creditor obtained a charging lien against certain real estate as result of judgment in suit against an alleged owner of real estate, and Superior Court of another county, having jurisdiction, entered order requiring receiver of such real estate to make support payments to wife of alleged owner and issue as to whether real estate was the community property or partnership property, insofar as creditor was concerned, remained to be determined by the court issuing support order, creditor was not entitled to writ prohibiting enforcement of support payment order and was required to test claim of alleged superiority of his lien in court issuing support payment order.

Alternative writ quashed.

Johnson, J., dissented.

1. **Prohibition — 3(1)**

Where judgment creditor obtained charging lien against certain real estate as result of judgment in his suit against alleged owner of real estate, and Superior Court of another county, having jurisdiction, entered order requiring receiver of such real estate to

make support payments to wife of alleged owner and issue as to whether real estate was community property or partnership property, insofar as judgment creditor was concerned, remained to be determined by Superior Court issuing support order, creditor was not entitled to writ prohibiting enforcement of support payment order and was required to test claim of alleged superiority of his lien in court issuing such order.

2. Courts — 123½2

Superior Court is a court of general and original jurisdiction.

Johnston & Gillenwater, Phoenix, for petitioner.

Wilson & Wilson, Phoenix, and Jerry Giesler, Beverly Hills, Cal., for respondent.

PHELPS, Chief Justice.

The petitioner, George C. Kemble, seeks a writ of prohibition to restrain the respondent court and the Honorable R. C. Stanford, Jr., one of the judges thereof, from enforcing one of its orders. This is a companion case to Cause No. 6910, Porter v. Stanford, Ariz., 347 P.2d 35. The facts therein stated need not be repeated. Those stated in this case are intended to be supplementary in nature. The order which the petitioner, George C. Kemble, seeks to prohibit the superior court from enforcing is precisely the same as the one sought to be prohibited in the Porter case hereinabove referred to.

Unlike the petitioners in Cause No. 6910, petitioner Kemble did not intervene in the trial of the case in Maricopa County from which the order complained of issued. Instead, Mr. Kemble, as plaintiff, and the defendant, William Arnold Porter by his attorney Wesley E. Polley, appeared before the Superior Court of Cochise County. There, a judgment in the amount of $139,575.25 was procured against William Arnold Porter individually

Then an order was issued by that court charging the interest of the defendant in the Arizona Hotel property with the amount of that judgment, the theory being that the defendant was a co-partner in a partnership which owned that property. The complaint, answer, judgment and charging order were all filed and procured on the 25th day of May, 1959. No notice of these proceedings was given to Gladys E. Porter or her attorneys. On the following day, May 26, 1959, the petitioner recorded a certified copy of his charging order in the office of the county recorder of Maricopa County.

By his petition in this court, Mr. Kemble takes the position that the lien which he acquired by reason of the charging order which issued from the Superior Court of Cochise County is superior to any lien which may have been created in favor of Gladys E. Porter by the respondent court of Maricopa County. The petitioner asserts that if the respondent court is not prohibited from enforcing the order complained of, he will be deprived of property without due process of law.

That the respondent court had jurisdiction to enter the order complained of has been dealt with in detail in Cause No. 6910, the companion case of the instant one. All that remains for us to decide is whether the petitioner, Mr. Kemble, has presented a question which would compel our issuance of a writ of prohibition on his behalf.

[1] Petitioner claims that his charging order is prior to any lien in favor of Gladys E. Porter in the Arizona Hotel. However meritorious this contention may be, it does not afford a basis for this court to issue the extraordinary writ herein sought.

[2] The issue of whether the Arizona Hotel is the community property of Gladys E. Porter and William Arnold Porter or partnership property in so far as petitioner Kemble is concerned, remains to be determined by the respondent court. A superior court is a court of general and original jurisdiction and constitutes the proper forum for the determination of that question. We,

therefore, feel the logical compulsion of suggesting that Mr. Kemble test his claim first at trial level where the rights of certain persons in this very same property are being examined. Certainly it cannot be said that the respondent court can deprive Mr. Kemble of property without due process until he has submitted himself to the jurisdiction of that court and asked that his rights therein be adjudged.

As in the companion case Cause No. 6910, the alternative writ of prohibition being improvidently issued, it is hereby ordered quashed.

STRUCKMEYER, UDALL and BERSTEIN, JJ., concur.

JOHNSON, Justice.

I respectfully dissent with the majority opinion for the reasons stated in my dissenting opinion in the companion case, Porter v. Stanford, Ariz., 347 P.2d 38.

It is my opinion that the order issued by the respondent court requiring the receiver of the Arizona Hotel to make support payments to Gladys E. Porter from the property entrusted to the receiver prior to a determination of its status as community or partnership property is void; and therefore the charging lien issued by a court of competent jurisdiction takes priority.

I would make permanent the writ of prohibition heretofore issued.

Attorneys for Petitioners

IN THE SUPREME COURT OF THE STATE OF ARIZONA

PEARLINE PORTER and PAULINE P. LEONARD, Petitioners, -vs- HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona, Respondent.	No. 7532 PETITION FOR WRIT OF PROHIBITION

TO: The Honorable Justices of the Supreme Court of the State of Arizona:

The petition of Pearline Porter and Pauline P. Leonard respectfully shows:

I

That the petitioners are residents of the States of California, and the respondent is now, and has been at all times herein mentioned, a duly elected Judge of the State of Arizona, in and for the County of Maricopa, and at all times herein mentioned was acting as Superior Court Judge in and for the County of Maricopa.

II

That petitioners and one William Arnold Porter, also known as W. A. Porter, entered into a partnership in 1943; that said partnership at all times since has been, and now is, in existence; that said property known as the Arizona Hotel in Phoenix, Arizona, more particularly described as Lots 1, 3 and 5, Block 74, City of Phoenix, Maricopa County, State of Arizona, is wholly owned by said partnership.

III

That on the 13th day of February, 1959, one Gladys E. Porter filed with the Clerk of the Maricopa County Superior Court a complaint for separate maintenance, No. 55179, against one William Arnold Porter; that summons was issued by said Clerk in said action; that no personal service was made upon the said William Arnold Porter, but constructive service was had by publication; that thereafter and on the 25th day of February, 1959, the petitioners filed their Motion for Intervention on the ground that they were in a situation as to be adversely affected by the disposition of property actually owned by them, which would be disposed of by the Court in the main action to the prejudices of the petitioners unless intervention was allowed; that upon the granting of said Motion for Intervention, the petitioners filed their complaint in intervention; that thereupon Glady E. Porter, defendant in intervention, filed her answer. That on the 14th day of May, 1959, the respondent, as Judge of the Maricopa County Superior Court, made and entered a decree of separate maintenance, a true copy of which is attached hereto, marked Exhibit "A". That petitioners were given no notice of said hearing and had no knowledge of it, had no opportunity to appear, and had no knowledge of said hearing or the entry of the decree of separate maintenance until a considerable time after the 14th day of May, 1959; that the said William Arnold Porter did not appear personally or by counsel and default was taken against him. No hearing was had, no evidence was introduced, and no order or judgment was rendered in connection with the issues raised by petitioners' Complaint in Intervention and the Answer filed by Gladys E. Porter, defendant in intervention. That on or about the 26th day of June, 1959, these petitioners applied to this Court for a writ of prohibition to prevent the respondent judge from taking further action which would have the effect of satisfying the above-mentioned decree of separate maintenance out of the Arizona Hotel property owned by the partnership of which the petitioners were members; although the alternative writ of prohibition was

issued and in force and the question of the true ownership of the Arizona Hotel property as between the partnership and the community estate had not been heard or determined, the said Gladys E. Porter caused to be issued a general writ of execution pursuant to which the Sheriff of Maricopa County conducted a sale of the Arizona Hotel property on August 20, 1959, and said property was purchased by the said Gladys E. Porter. A motion to vacate and set aside said sale was denied by respondent judge. That on December 2, 1959, this Court made and entered its opinion and decision quashing the alternative writ on the ground that the respondent judge had jurisdiction of the parties and subject matter of the litigation and had authority to order the payment of funds for support of the said Gladys E. Porter and the minor children of the parties and to appoint a receiver to take charge of the property, notwithstanding the petitioners claimed a partnership interest in such property (see *Porter v. Stanford*, 86 Ariz. 402, 347 P.2d 35.) Thereupon and on the 7th day of April, 1960, the Sheriff of Maricopa County issued to the said Gladys E. Porter a sheriff's deed for the Arizona Hotel property.

IV

That W. A. Porter, the same person as the said William Arnold Porter, on or about the 26th day of May, 1959, filed a complaint for divorce against Gladys Porter, the same person as the said Gladys E. Porter, in the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, which cause is numbered 18556-A; a true copy of which is attached hereto and made a part by reference, marked Exhibit "B". That thereupon and on or about the 13th day of July, 1959, the said Gladys Porter entered a general appearance in the above-entitled case and filed her answer and counterclaim, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "C"; that the said Gladys E. Porter invoked the jurisdiction of the Idaho Court in connection with the Arizona Hotel property by the allegations contained in paragraph IV of the First Count of her Counterclaim:

"That the parties hereto have acquired as community property ownership or lease hold rights in and to approximately eight hotels located in the western States; that the parties hereto own a farm or ranch at Bonners Ferry, Idaho, of approximately 2,500 acres, a home at Hayden Lake, Idaho, valued in excess of $125,000.00; that defendant believes and therefore alleges that she has a community interest in certain other properties controlled by plaintiff, including but not limited to, stocks, bonds, bank accounts and real property, the whereabouts and description of which are at this time unknown to defendant; that the parties hereto own as community property an interest in the Arizona Hotel located at the corner of Third Avenue and Washington Street in Phoenix, Arizona, more particularly described as Lots 1, 3 and 5 in Block 74, Original Townsite of Phoenix, Arizona, according to the man of record in the office of the County Recorder, Maricopa County, Arizona;"

and in paragraph VII of the First Count of her Counterclaim:

"... that defendant alleges that upon hearing of this case on its merits the Court should make a proper and equitable decree awarding to defendant as her sole and separate property not less than one-half of the community property of the parties hereto;"

That thereupon the petitioners herein, Pearline Porter and Pauline P. Leonard, filed their Petition for Intervention in said action in so far as that action affected the interest of petitioners in the Continental Hotel System and, an integral part thereof, the Arizona Hotel in Phoenix, Arizona; thereupon and on the 30th day of November, 1959, it was ordered that said intervention be allowed, a true copy of said order being attached hereto and made a part hereof by reference, marked Exhibit "D"; that thereupon and on or about December 18, 1959, an order was made and entered containing, among other things, the following:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, GLADYS PORTER, her agents,

representatives, privies and assigns, be and same are hereby enjoined and restrained during the pendency of this action from in any way interfering with the management and, cotrol of the community property of the parties hereto during the pendency of this action, and that said defendant, her agents, representatives, privies and assigns, are enjoined and restrained from pursuing, maintaining and prosecuting any action or actions in the State of Arizona against the community property of the parties hereto in the wasting thereof or from taking any action or actions which interfere with the management and control of the community property by the plaintiff herein."

a true copy of said order being attached hereto and made a part hereof by reference, marked Exhibit "E".

Notwithstanding the foregoing, the said Gladys E. Porter on the 4th day of May, 1960, executed her quitclaim deed of a one-half interest in the Arizona Hotel property to W. Francis Wilson and Richard A. Wilson, which deed is recorded in Docket 3319 at page 442, in the records of the Office of the County Recorder of Maricopa County, Arizona, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "L". That said deed was made, executed and delivered during the time of the trial on the merits in the Idaho Court, when all parties being present personally and by counsel, a trial was had, evidence introduced, arguments had, briefs filed and Findings and Conclusions of Law made and entered, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "F". That paragraphs VI, VII, VIII, IX and XX of said Findings of Fact read as follows:

VI

Prior to the marriage of plaintiff and defendant, and during the marriage, the plaintiff, intervenors, and a half-brother of plaintiff and intervenors, Andy Rickett, were engaged in the hotel business, owning and operating hotels in various states

under corporate and partnership ownerships. That one of the partnership ownerships was styled Rickett Hotel System, a co-partnership, which, in 1948, changed the name from Rickett Hotel System to Continental Hotels System, a co-partnership.

VII

Ownership of stock in the various corporations except for qualifying shares, were held equally by the community of the plaintiff and defendant, the intervenors and Andy Rickett, the half-brother. The partnership interest in the Rickett Hotel System and as succeeded by the Continental Hotel System, a co-partnership, was likewise equally held by the community of the plaintiff and defendant, with the intervenors and Andy Rickett. In 1948, Andy Rickett sold his interest in all stock in the corporations and the partnership interest in the Rickett Hotel System, or the Continental Hotel System, a co-partnership, to the community of the plaintiff and defendant, and thereafter the interest of the community of plaintiff and defendant in and to the Continental Hotel System, a co-partnership, was a 2/3 partnership interest, and the intervenors each held a 1/6 partnership interest in and to the Continental Hotels System, a co-partnership.

VIII

All stock held by the plaintiff and defendant in the various corporations is community property. The 2/3 partnership interest owned by plaintiff and defendant in the Continental Hotels System, a co-partnership, is community property.

IX

The court finds that the Arizona Hotel, described as follows, to-wit:

Lots 1, 3, and 5, Block 74, Original Townsite of Phoenix, according to the maps and records of the County Recorder

of Maricopa County, State of Arizona, together with all good will, trade names, fixtures, furnitute, furnishings, and equipment and all supplies and every incident and appurtenant, including rental agreements, affecting the same,

is owned by the Continental Hotels System, a co-partnership, and even though the deed to said properties was taken in the names of plaintiff and defendant herein, said properties were purchased with funds belonging to the partnership known as the Continental Hotel System. All taxes and expenses paid thereon were paid by the co-partnership of the Continental Hotel System, and said Arizona Hotel and its allied properties were at all times carried upon the books and records of the co-partnership as an asset thereof.

XX

The court finds that interest of Pauline Porter Leonard and Pearline Porter in and to the Continental Hotels System, a co-partnership, formerly the Rickett Hotel System, is a bona fide partnership interest therein, having been purchased and acquired by them by the contribution of capital assets in the early formation of said hotel enterprise. The Court further finds that at all times partnership tax returns have been filed with both the Federal and State governments and that the interest of the intervenors has at all times been so declared by the records, books and files of said co-partnership.

The court further finds that Pauline Porter Leonard and Pearline Porter were not merely nominal partners or employees of said partnership, but that their interest originated in the beginning of such hotel enterprise and that they have held and do hold stock interest in various corporations to the same extent as their ownership exists in and to the Continental Hotels System, a co-partnership."

That paragraphs V and VIII of said Conclusions of Law read as follows:

V

The acquisition of that property known as the Arizona Hotel and more particularly described as follows, to-wit:

> Lots 1, 3, and 5, Block 74, original townsite of Phoenix, according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings, and equipment and all supplies and every incident and appurtenant, including rental agreements, affecting the same,

in the names of W. A. Porter and Gladys E. Porter, was, as trustees for the co-partnership of the Continental Hotels System.

VIII.

The plaintiff and defendant shall execute and deliver a good and sufficient transfer and conveyance unto the intervenors of a one-sixth interest each of any and all properties standing in their names belonging to the Continental Hotels System, a co-partnership."

That thereupon and on or about the 26th day of December, 1960, judgment was made and entered, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "G".

V

That paragraphs X, XI and XII of the above-mentioned judgment and decree read as follows:

> "It is further ORDERED, ADJUDGED and DECREED that the Continental Hotels System, a co-partnership, comprised of the community of W. A. Porter and Gladys Porter, and the intervenors, Pauline Porter Leonard and Pearline Porter, is the owner of the following described real and personal properties, to-wit:

Lots 1, 3, and 5, Block 74, Original Townsite of Phoenix, according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings, and equipment and all supplies and every incident and appurtenant including rental agreements affecting the same. (Also known as the Arizona Hotel.)

It is further ORDERED, ADJUDGED AND DECREED that even though the title to that property denominated as the Arizona Hotel was taken in the name of W. A. Porter and Gladys E. Porter, said property is the property of the co-partnership of Continental Hotels System, and that the plaintiff and defendant took said deed as trustees for and on behalf of the co-partnership known as the Continental Hotels System.

It is HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff be and the same is awarded all right, title, interest and equity of the community of W. A. Porter and Gladys E. Porter, in and to the co-partnership known as the Continental Hotels System, which co-partnership owns those properties heretofore described as the Arizona Hotel properties.

VI

That paragraph XV of the above-mentioned Judgment and Decree reads as follows:

"It is HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff and defendant shall, within ten (10) days of the date of this decree execute and deliver a transfer and conveyance unto the intervenors and unto each of them, a one-sixth interest each in and to those properties herein designated as the Arizona Hotel and in and to the co-partnership known as the Continental Hotels System, and if the plaintiff and defendant fail, neglect or refuse to execute said con-

veyance within said ten days from date hereof, then the clerk of this court is hereby empowered to execute and deliver such conveyances as are necessary to carry into force and effect said judgment."

VII

That thereupon and on or about the 28th day of December, 1960, the said Gladys E. Porter made, executed and delivered her Release of Judgment in the Maricopa County Superior Court Separate Maintenance action, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "H".

VIII

That thereupon and on the 27th day of February, 1961, the said Gladys E. Porter made, executed and delivered her Quitclaim Deed to an undivided two-thirds interest in and to all of her right, title and interest in and to the Arizona Hotel property to the said William Arnold Porter, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "I".

IX

Thereupon and on or about February 27, 1961, the said Gladys E. Porter made, executed and delivered her Quitclaim Deed to an undivided one-sixth interest in the Arizona Hotel property to Pearline Porter and Pauline Porter Leonard each, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "J".

X

That paragraph XVII of the above-mentioned Judgment and Decree reads as follows:

"It is further ORDERED, ADJUDGED AND DECREED that the defendant shall dismiss any and all proceedings by her maintained against the plaintiff or intervenors, and either

of them, in the State of Arizona, including the removal of any and all receivers affecting the properties designated herein as the Arizona Hotel, and that she shall be and is hereby enjoined from maintaining, prosecuting or instituting any action against the plaintiff or intervenors affecting those properties known as the Arizona Hotel from date hereof, and shall further release any judgment or judgments which she has obtained against or affecting said properties known as the Arizona Hotel which she may have acquired.

XI

That notwithstanding the above judicial prohibition, the said Gladys E. Porter has prosecuted her action in the Maricopa County Superior Court, No. 55179, to the point that a hearing has been had (beginning December 18, 1961), evidence has been introduced, and the respondent judge has indicated that he will make and enter a judgment against these petitioners, as plaintiffs in intervention, and in favor of Gladys E. Porter, as defendant in intervention, having the legal effect of confirming the title in and to the Arizona Hotel property in the said Gladys E. Porter.

XII

Petitioners herein throughout the proceedings mentioned in the preceding paragraph objected on the ground that the issues being tried had previously been finally determined against the said Gladys E. Porter by the Idaho judgment, which had become final, in accordance with the affirmative defense set up in their supplemental complaint in intervention, upon which the trial proceeded, a true copy of which is attached hereto and made a part hereof by reference, marked Exhibit "K". That, notwithstanding said objections, the respondent judge proceeded with the trial and, unless prohibited by this Court, will continue said proceedings to and including the entry of a final judgment and the enforcement thereof, notwithstanding the fact the said Gladys E. Porter in her supplemental answer and counterclaim, a true copy

of which is attached hereto and made a part hereof, marked Exhibit "M", relied on the Idaho judgment and sought to have it established in Arizona as a valid foreign judgment with the exception of the portion thereof ordering the execution of the conveyance of the Arizona Hotel property, which she claimed to be void for lack of jurisdiction of the Idaho court to make and enter a judgment directly affecting real property in Arizona.

XIII

That the respondent has no jurisdiction to enter said judgment for the reason that the matters have been finally determined against the said Gladys E. Porter by a final judgment of the Idaho Court made and entered long before the said hearing which began on December 18, 1961.

XIV

That petitioners do not have a plain, speedy and adequate remedy other than the application to this Court for a Writ of Prohibition, and an appeal would be ineffectual and inadequate for the following reasons: A receiver was appointed to take charge of and operate the Arizona Hotel property on the 14th day of April, 1959, and ever since has been in charge of and operating said property; that, on an average, cash or bank deposits in the amount of $25,000.00 is in the custody and control of the said receiver; that should the respondent judge make and enter the judgment as indicated above, the said Gladys E. Porter will succeed in having the receivership dissolved and the Arizona Hotel property and all of its assets, including the above-mentioned cash, delivered to her and her attorney for their use and benefit during the pendency of an appeal with no adequate safeguard protecting the rights of petitioners should an appeal terminate ordering judgment in favor of petitioners.

XV

That Gladys E. Porter is the real party in interest and her exact address is unknown to petitioners, but she is represented as counsel by Wilson and Wilson, 522 Luhrs Building, Phoenix, Arizona.

XVI

That all exhibits hereinabove mentioned are made a part hereof by reference as if fully set forth herein.

WHEREFORE, petitioners pray that a Writ of Prohibition be issued out of this Court to the Honorable R. C. Stanford, Jr., Judge of the Superior Court of Maricopa County, State of Arizona, ordering him to take no further action whatsoever in connection with Cause No. 55179 or in any other proceeding having to do with the Arizona Hotel property.

BEER, SEAMAN & POLLEY
By WESLEY E. POLLEY
Attorneys for Petitioners

IN THE SUPREME COURT OF THE STATE OF ARIZONA

PEARLINE PORTER and PAULINE P. LEONARD,
Petitioners,
v.
HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona,
Respondent.

No. 7532
CERTIFIED COPY OF MINUTE ENTRY

The petitioners having filed an original application for an Alternative Writ of Prohibition and the respondent having filed his objections thereto, an informal hearing was had under the provisions of Rule 1, Rules of the Supreme Court. Attorney Wesley Polley appeared for the petitioners and Attorney W. Francis Wilson appeared for the respondent.

The Court, being fully advised in the premises, ordered that the Petition for an Alternative Writ of Prohibition be denied.

DONE IN OPEN COURT this 30th day of January, 1962.

STATE OF ARIZONA,

SUPREME COURT.

I, Sylvia Hawkinson, Clerk of the Supreme Court of the State of Arizona, hereby certify the above to be a full and true copy of the Minute Entry made and entered in the above entitled cause by said Court on January 30, 1962.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of said Court this 2nd day of February, 1962.

/s/ SYLVIA HAWKINSON, *Clerk*

IN THE SUPREME COURT OF THE STATE OF ARIZONA

WILLIAM A. PORTER, Petitioner, *vs.* HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, Sstate of Arizona, Respondent.	No. 7541 PETITION FOR WRIT OF CERTIORARI

TO: The Honorable Justices of the Supreme Court of the State of Arizona:

(Attached hereto and made a part hereof, by reference, are the following exhibits:

Exhibit A, Original decree of Separate Maintenance, Arizona.

Exhibit B, Divorce complaint of W. A. Porter, Idaho.

Exhibit C, Divorce answer and counterclaim of Gladys Porter, Idaho.

Exhibit D, Court Order, Idaho.

Exhibit E, Findings of Fact and Conclusions of Law, Idaho.

Exhibit F, Judgment and Decree, Idaho.

Exhibit G, Notice of Appeal by Gladys Porter, Idaho.

Exhibit H, Release of Arizona judgment, Arizona.

Exhibit I, Quitclaim Deed, Idaho.

Exhibit J, Quitclaim Deed, Idaho.

Exhibit K, Quitclaim Deed, Idaho.

Exhibit L, Opinion on Order to Show Cause, Contempt, by Gladys Porter, Idaho.

Exhibit M, Answer and Counterclaim by Gladys Porter, Arizona.

Exhibit N, Complaint by Gladys Porter in Cause 132632.

Exhibit O, Ne Exeat Writ by Gladys Porter in Cause 132632.)

Petitioner William A. Porter respectfully requests that the record may show:

I.

That the petitioner is, and has been at all times herein mentioned, a resident of the State of Idaho, and that respondent is now, and has been at all times herein mentioned, a duly elected Judge of the State of Arizona, in and for the county of Maricopa, and at all times herein mentioned was acting as Superior Court Judge in said County.

II.

That there is now pending in the Superior Court of Maricopa County, State of Arizona, a cause of action numbered 55179, brought by plaintiff Gladys E. Porter against defendant, William Arnold Porter, a petitioner herein, in 1959, in which suit Pearline Porter and Pauline P. Leonard are plaintiffs in intervention, George C. Kemble is plaintiff in intervention, and Gladys E. Porter is defendant in intervention.

III.

That petitioner, as named defendant in Cause 55179, has at no time been personally served in said action, has at no time appeared, either generally or specially, in any proceedings attendant to said action, and that judgment has been taken in default of petitioner; that petitioner now asks for the writ of certiorari in order that he may not now be deemed to have appeared in said action, because no right of appeal exists to petitioner, and because he is in acute need of a speedy and adequate remedy.

IV.

That petitioner's protest to the purported jurisdiction now being exercised by the Honorable R. C. Stanford, Jr., as Judge of the lower court, is based on the fundamental proposition that the attempted acts of the Maricopa Superior Court represent a clear violation of petitioner's rights under Article IV, Sections 1 and 2, of the Constitution of the United States and under Amendment 14, Section 1, of the Constitution of the United States, whereby the State of Arizona, acting through its officer of the Superior Court, is denying full faith and credit to the judicial proceedings of a sister state, with the result that petitioner is being denied the privileges and immunities accorded other citizens of Arizona and the several states, and is being denied equal protection of the laws of this jurisdiction, and is being deprived of his property without due process of law.

V.

That the original proceeding in Cause No. 55179 was an action for separate maintenance brought by petitioner's then-wife, Gladys Porter, as a result of which action the Maricopa Superior Court issued a judgment on May 14, 1959, for Gladys Porter, taken in default of petitioner herein, which decreed, by its terms, a money judgment in her favor. (Exhibit A) The court therein stated that jurisdiction obtained over this defendant, despite the fact that service was admittedly constructive only. As a result of

that decree, the hotel property of petitioner and his partners, such property being particularly described as the Arizona Hotel, Lots 1, 3 and 5, Block 74, City of Phoenix, Maricopa County, Arizona, was held to be community property, and was so affirmed by this court in *Porter vs. Stanford* (1959) 86 Ariz. 402, 347 P2d 35, and in execution on the judgment, was sold at a Sheriff's sale, Maricopa County, on August 20, 1959, to Gladys E. Porter, to whom a sheriff's deed issued on April 7, 1960. Petitioner would respectfully point out, and emphasize, that neither the issue of jurisdiction of the defendant nor the issue of title of the hotel property was actually litigated in any of those proceedings; only recitals of jurisdiction were made.

VI.

That Gladys Porter, plaintiff in Cause No. 55179 was, in the meantime, served with notice of proceedings in divorce, instituted by petitioner herein in their domiciliary State of Idaho on or about the 26th day of May, 1959 against the said Gladys Porter; and that Gladys Porter did appear in all subsequent Idaho proceedings, Numbered Cause 18556-A, in person and in company of her attroneys, and did not only passively accept the in personam jurisdiction of the Idaho court, but actively invoked such jurisdiction by filing a counterclaim for divorce without raising or contesting any issue of the Idaho court's in personam jurisdiction, and by affirmatively pleading that the Idaho court determine all matters connected with the divorce and the division of community property; and that Gladys Porter did specifically plead, for the Idaho court's determination, the matter of the division of the Arizona Hotel property in Phoenix, Arizona, heretofore mentioned, and prayed the court for an equitable decree awarding her one-half of such property as her interest in community property belonging to herself and petitioner herein. (Exhibits B and C)

VII.

That Gladys Porter, defendant in the Idaho proceedings, did affirmatively plead therein the fact of the separate maintenance

action instituted by her in Arizona, Cause No. 55179, and in that connection alleged that the Arizona Superior Court had jurisdiction of the parties, had issued a decree for money judgment in her favor, and that such decree merited the recognition of the Idaho court by virtue of full faith and credit and was a bar to Idaho litigation in all relevant respects.

That the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, acting through the Honorable Robert E. McFarland, District Judge, specifically entertained these issues raised by Gladys Porter, specifically determined these issues, and consonant with such determinations, did issue specific orders to Gladys Porter with regard to these issues; that the Idaho court litigated and decreed (Exhibits E and F) these precise findings: (1) That the Arizona Superior Court, in Cause No. 55179, was without jurisdiction of the defendant therein, petitioner here, for the purposes of the decree issued by that court, and that the Arizona judgment was not, therefore, entitled to full faith and credit by the State of Idaho, and that the counterclaim of Gladys Porter which raised that issue, in the Idaho divorce action, was thereby stricken; (2) That title to the property denominated as the Arizona Hotel was taken in the name of W. A. Porter and Gladys E. Porter, but that the property was in reality the property of the co-partnership of Continental Hotels System, which property had been held by W. A. Porter and Gladys Porter in trust for said partnership; (3) That the right, title, interest, and equity of Gladys Porter, in the community property of the Arizona Hotel, was awarded to the plaintiff in that action, the petitioner herein. (4) That Gladys Porter must, by order of the court, convey her interests in the Arizona Hotel to William Arnold Porter, petitioner herein, and to Intervenors Porter and Leonard.

VIII.

That these specifically litigated facts and findings of the Idaho court were an integral part of the action before that court, that

the Idaho court had unassailable jurisdiction of the persons of Gladys Porter and William Porter, Petitioner herein, and that the issues acted upon were affirmatively and concurrently submitted by both plaintiff and defendant in that action, for the determination of that court, and that the judgment of that court, which issued in December of 1960, is a conclusive adjudication of all matters before the court and is a final judgment entitled to the full faith and credit of the sister State of Arizona.

IX.

That the issue of jurisdiction of the Arizona court in the original proceeding, and the issue of title to the Arizona Hotel property, both having been expressly determined by the Idaho court, are binding on the courts of Arizona and every other state, as they affect the rights and interests of plaintiff and defendant in that action, and that Article IV, Section 1, of the Constitution of the United States precludes any state from questioning such determinations unless an objection is based on fraud or on the issue of the Idaho court's power and jurisdiction to act, in personam, on the plaintiff and defendant therein; and that neither fraud nor an objection to the jurisdiction of the Idaho court to so act has ever been raised in either that court or any court.

X.

That by order of the Idaho court, acting in personam on Gladys Porter, Gladys Porter did execute deeds (Exhibits J and K) conveying her interests in the Arizona Hotel to petitioner herein and to intervenors below ,thereby disclaiming all of the right, title, and interest of Gladys Porter in such property, and that such deeds were lodged with the Clerk of the District Court of Idaho, Kootenai County, on February 27, 1961; and that such deeds insofar as they affect the interests of Gladys Porter, defendant therein, and William Arnold Porter, plaintiff therein, and intervenors below, are final and conclusive of their rights in that property and must be accorded that legal effect in all the states of the union.

XI.

That petitioner would respectfully point out to this court that the Idaho judgment was in favor of Gladys Porter, and against the petitioner herein, wherein Gladys Porter, by her counterclaim, was awarded the divorce from petitioner, and was awarded an equitable and substantial amount of real and personal property, as well as the custody of the minor child, Tom Clark Porter, son of plaintiff and defendant therein, and that Gladys Porter has willingly accepted all rights, properties, and benefits bestowed upon her by the Idaho court without questioning or denying, in any way, the Idaho court's orders with respect to those matters, and has subsequently questioned only an order adverse to her, by which petitioner was awarded his fair share of property.

XII.

That after Gladys Porter had invoked the jurisdiction of the Idaho court by her counterclaim and prayer for the division of all community property, and after the Idaho court had taken published cognizance of all the community property, including the Arizona Hotel property, the Idaho District Court, in December of 1959, issued an order (Exhibit D) enjoining Gladys Porter from disposing, in any way, of any of her interests in the Arizona Hotel, pending disposition of such issue, and further enjoining her from any further action in the Arizona courts with respect to the rights and property of herself and petitioner; and that immediately thereafter, in flagrant disobedience of the order of the court, Gladys Porter executed a quitclaim deed (Exhibit I) purporting to convey one-half of her one-half interest in the Arizona Hotel community property to her Arizona attorneys of record, W. Francis Wilson and Richard A. Wilson, which deed was recorded in May, 1960, in Idaho; and that such deed was executed by Gladys Porter despite her direct knowledge of the order enjoining her from such act, and such deed was accepted by her attorneys, the Messrs. Wilson, who were appearing in the Idaho Court with Mrs. Porter in all proceedings, despite their direct

knowledge of the injunction forbidding such acts and in derogation of their responsibilities as officers of the court in which they were appearing.

XIII.

That since the decree of the Idaho court issued in December of 1960, Gladys Porter, in willful disregard of the judgment which she, herself, procured in Idaho, has performed the following acts:

1. *May, 1961:* In response to the Intervenors' Supplementary Complaint, in Cause No. 55179, here at issue, has answered and counterclaimed (Exhibit M) in pleadings directly *denying* that the orders of the Idaho court have any effect on the title to the Arizona Hotel property, despite the deed that she, herself, executed to petitioner herein, and despite the Release of Judgment by her that was filed in the Maricopa Superior Court in February, 1960, which release was ordered by the Idaho Court in the divorce judgment, and executed by Gladys Porter in compliance therewith. (Exhibit H)

2. *August, 1961:* Gladys Porter sustains the protection of the Idaho court in an attempt to have petitioner herein cited for contempt for failure to pay child support, citing, *in her support,* the order of the Idaho court in the divorce judgment. Such citation was refused by the Idaho court which specifically found and stated that the continued harassment of petitioner by Gladys Porter was responsible for petitioner's inability to release his property from the receivership in Arizona, and to thereby secure funds to pay his child support obligations, and the court again admonished Gladys Porter to desist from Arizona proceedings and to cause the release of petitioner's Arizona property to him. The court's decision on this matter issued in *September, 1960.* (Exhibit L)

3. *November, 1960:* Gladys Porter institutes new proceedings against petitioner in the Superior Court of Arizona, Maricopa County, in Cause No. 132632, again defying the Idaho court, and sues on the money judgment obtained in May, 1959, in Arizona,

despite the Idaho litigation dissolving the effect of such judgment and despite the aforementioned release of such judgment. (Exhibit N)

4. *November, 1960:* Gladys Porter causes a Writ of Ne Exeat to issue to restrain petitioner herein from leaving the state, in conjunction with Cause No. 132632, a pointless and harassing proceeding which caused petitioner to be arrested and to be held until he finally succeeded in being released on cognizance of a $10,000 bond. (Exhibit O)

XIV.

That Gladys Porter, plaintiff below, is presently engaged in Idaho appellate proceedings, by which she has *sustained* the jurisdiction of said appellate court (Exhibit G); is presently engaged in pursuing counterclaims in Cause No. 55179 in Arizona, by which she *denies* the Idaho authority, and is presently engaged in pursuing her purported remedy in Cause No. 132632; and that the inconsistency of such actions is clearly shown by the fact of the Idaho judgment being pleaded in all claims of plaintiff in Arizona at this time for the purpose of *supporting* the time-elements claimed for the separate maintenance action, and for the purpose of affirming all benefits conferred on her by the Idaho decree, and for the purpose of *denying* the property distribution of the Idaho court only insofar as it relates to petitioner's award therein.

XV.

That the Superior Court below has at all times been cognizant of the Idaho decree of divorce and property distribution, by virtue of plaintiff's own pleadings, and has, therefore, known that jurisdiction of all matters between plaintiff and petitioner was solely in the Idaho court, primarily on the basis of the effect of the final judgment which issued from that court, but, also, necessarily, on the basis of plaintiff's own appellate proceedings in the Idaho court; and that the Superior Court has persistently refused to ac-

cord the final judgment of Idaho full faith and credit, or even to admit such judgment into evidence for the purpose of determining whether or not the Arizona court has jurisdiction, despite the well-known principle that the litigated issue of jurisdiction, itself, is entitled to full faith and credit when it is embodied in the final judgment of a sister state's court, and despite the fact that Mrs. Porter is presently pursuing her legitimate remedy by appeal to the Idaho Supreme Court, pleading the alleged error of the lower Idaho court as to Arizona's jurisdiction in her separate maintenance action here.

XVI.

That the writ of certiorari is further necessary to prevent the unconscionable harassment of petitioner by plaintiff below, in the courts of both Arizona and Idaho, and to prevent the several suits already in existence from further multiplication at the instigation of plaintiff below. Petitioner is forced to the wry conclusion that he is suffering from an excess of justice.

XVII.

That the remedy of appeal is not available to petitioner because judgment has been taken in default of him (Memorandum attached); because the appellate court has no jurisdiction on appeal from a Superior Court that has no jurisdiction, and the lack of jurisdiction in the Superior Court is the basic contention of petitioner; because petitioner must be deemed to have made an appearance in an action from which he institutes an appeal, and petitioner is unwilling that such appearance be made, his unwillingness being grounded solely in his belief that the law of conflicts clearly dictates, in the present situation, the detriment to petitioner of such an appearance. (Memorandum support) Further, that even if appeal were available to petitioner, such procedure represents an extended postponement of direct action by this court, and that a long delay would be fatal to any hope that petitioner might regain his rightful property before it is sold by

execution sale. Petitioner does not purport to claim that the final judgment of the Idaho court can effect and operate on any rights and interests except those of the parties to that action, and assuming the hotel property ultimately comes into the hands of a bona fide purchaser, the court would be powerless to aid petitioner in any way.

XVIII.

That petitioner herein has failed to discuss the actions and interests of the Intervenors of both the Idaho and Arizona actions only because petitioner is aware that the Intervenors have competently set forth their own position to this court for consideration, but petitioner respectfully submits that he acknowledges and claims that the Idaho judgment must be as conclusive of their rights as it is conclusive of all other matters before that court, by virtue of their appearance in that court and their interest in the property distributed by that court, and that if full faith and credit be denied the final judgment of the Idaho court, by this state, it will result in depriving both petitioner and the Intervenors of their property without due process of law and in direct contravention of the principles set forth in the 14th amendment, Section 1 and Article IV, Sections 1 and 2 of the U. S. Constitution, which sections guarantee to petitioner and Inervenors equal protection and which assures them that the judgment they secure in one state's court will be accorded honor and respect in all other states' courts, that they shall be granted privileges and immunities common to all other citizens, and that they may not be deprived of property without due process of law. That petitioner submits that no such violations can occur if the lower court adheres solely to the law of Article IV, Section 1, and grants to the Idaho judgment the full faith and credit it merits.

XIX.

That petitioner's counsel would respectfully emphasize that there is not here raised any question of "excess of jurisdiction" by

the lower court; it is counsel's strong belief, and firm claim, that the Superior court below has never *had* jurisdiction of petitioner, without which the court's jurisdiction is quite imperfect, and that this condition of imperfect jurisdiction has been litigated and established as an ultimate finding of fact and law by the Idaho court. Further, that petitioner has not consented to Arizona jurisdiction in Cause No. 55179 at any time subsequent to the Idaho judgment, nor been served with process in said cause, and it cannot conceivably be held, therefore, that the lower court has "cured" jurisdiction by a recent acquisition of defendant's legal presence.

XX.

That the Idaho court's judgment must be held to control the issue of jurisdiction of the Arizona court, and that petitioner must insistently reiteriate that if full faith and credit be given the Idaho judgment, as ordered by the federal Constitution, the issue of jurisdiction litigated in Idaho becomes, and is, res judicata in Arizona, with the unequivocal result that the Superior Court below does not have jurisdiction, that its prior acts are void, and that it is without any authority at all to proceed in Cause No. 55179.

WHEREFORE petitioner prays that the writ of certiorari issue, restraining the Honorable R. C. Stanford, Jr., Judge of the Maricopa Superior Court, from exercising jurisdiction and enforcing the judgment in the cause below; and petitioner further prays that this court, in protection of the sovereign duty of the State of Arizona to abide by the Constitution of the United States, and by this court's inherent authority to implement and effect its own mandates, do declare that all prior acts of Judge Stanford and of plaintiff Gladys Porter, which negatively affect the result of the Idaho judgment, be held null and void and without force in law and fact, and that the Idaho decree be held to be conclusive of all rights and interests of the parties to that action; and for such other relief as to the court may seem appropriate and just.

LANGMADE AND LANGMADE

BY .....

Attorneys for Petitioner

Room 500

Arizona Bank Building

Phoenix, Arizona

NOTE

The following exhibits, numbered "A" through "O" in the court below, were incorporated by reference into petitioner's application for the writ of certiorari from the Supreme Court of Arizona. Precisely the same exhibits, with two additional ones, were incorporated by reference into the intervenors' petition for a writ of prohibition from the Supreme Court of Arizona. The two additional exhibits filed by the intervenors were copies of the Idaho Court's *ORDER GRANTING INTERVENTION* in the divorce proceedings therein, and the *INTERVENORS' SUPPLEMENTARY COMPLAINT* subsequently filed in the separate maintenance action in the Arizona trial court. These two exhibits are found herein immediately following the exhibits offered by petitioner, and are included for the purpose of fully disclosing to this Court all of the record considered by the Supreme Court of Arizona in the two hearings by which both the writs of prohibition and certiorari were denied.

The numbering of the exhibits "A" through "O", is consistent with the references thereto in petitioner's application for the writ of certiorari in the Arizona Supreme Court, but is *NOT* applicable to the exhibit—references cited in the intervenors' application. As stated, intervenors' exhibits were identical, with two additions, but were numbered differently.

EXHIBIT "A"

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Walter S. Wilson
Filed — Clerk
W. A. Rosenquist
Deputy
1959 May 14
PM 1:05

GLADYS E. PORTER,
Plaintiff,
vs.
WILLIAM ARNOLD PORTER,
Defendant.
PEARLINE PORTER and PAULINE P. LEONARD,
Plaintiffs in Intervention
vs.
GLADYS E. PORTER,
Defendant in Intervention

No. 55179
DECREE OF SEPARATE MAINTENANCE

This cause coming on regularly to be heard on the 14 day of May, 1959, before the Court sitting without a jury, and GLADYS E. PORTER appearing in person and by her attorneys, WILSON & WILSON, and the defendant appearing neither in person nor by counsel, and it appearing that the said Defendant was duly served with process herein, to-wit: by publication of the said summons in the Weekly Gazette, a newspaper of general circulation in the County of Maricopa, State of Arizona, the first date of publication being on the 24th day of February, 1959, and the Defendant not having answered Plaintiff's Complaint herein within the time provided by law or otherwise, and the default of the

Defendant for not answering said Complaint having been duly entered herein in the manner provided by law, and evidence having been introduced on behalf of said Plaintiff at the hearing of this cause, and said cause having been submitted to the Court for its consideration and decision, and the Court having considered same and being fully advised in the law and the premises thereof, the Court finds: That all of the allegations contained in the Complaint are true, and that a decree of separate maintenance should be granted as prayed for in said Complaint.

The Court further finds that the Plaintiff is a fit and proper person to have the care, custody, control, and education of the minor children of the parties hereto within the jurisdiction of this Court, to-wit: SANDRA JEAN PORTER, age sixteen (1) years, WILLIAM ARNOLD PORTER, JUNIOR, age fifteen (15) years, TOM CLARK PORTER, age three (3) years; the Court further finds that Three Thousand ($3,000.00) Dollars a month for the permanent support and maintenance of the Plaintiff and the minor children of the parties in her care, custody and control, is a reasonable amount to be allowed Plaintiff. The Court further finds that, because of the extraordinary and unusual and complicated nature and scope of this matter, the sum of Fifteen Thousand ($15,000.00) Dollars is a reasonable attorney's fee to be paid Plaintiff's counsel, JERRY GIESLER and WILSON & WILSON. The Court further finds that the Plaintiff herein has a support order dating from the 1st day of February, 1959, in the sum of Three Thousand ($3,000.00) Dollars per month, no part of which has been paid to Plaintiff, together with the sum of Five Thousand ($5,000.00) Dollars as and for attorney's fees, pendente lite, to Plaintiff's attorney, JERRY GIESLER and WILSON & WILSON, and that the Plaintiff should have a lien on the community property of the parties found within the jurisdiction of this Court in the amount of Ten Thousand Two Hundred $10,200.00.00 Dollars, being the support due and owing her from the 1st day of February until the 12 day of May, 1959, together with the sum of Five

Thousand ($5,000.00) Dollars as and for the attorneys' fees pendente lite. The Court further finds that all of the community property of the Plaintiff and Defendant located in the State of Arizona should be charged with the support of the Plaintiff, and for that purpose any community interest in the Arizona Hotel, being

> Lots 1, 3 and 5 of Block 74, original townsite of Phoenix, according to the map of record in the office of the County Recorder of Maricopa County, Arizona,

is to be used for the payment of Plaintiff's and the minor children's support and maintenance, and should be set aside for that purpose.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff be and she is hereby authorized to live separte and apart from the Defendant.

2. That the Plaintiff is to receive for herself and the minor children of the parties hereto, support and maintenance in the sum of Three Thousand ($3,000.00) Dollars per month, commencing on the 15 day of May, 1959, and a like sum on the 15 day of each and every month thereafter until the further order of this Court.

3. That the Plaintiff have the care, custody, control, and education of the minor children of the parties hereto now within the jurisdiction of this Court, to-wit: SANDRA JEAN PORTER, age sixteen (16) years, WILLIAM ARNOLD PORTER, JUNIOR, age fifteen (15) years, and TOM CLARK PORTER, age three (3) years.

4. That the Plaintiff have a lien on all of the community property of the parties hereto for support under a pendente lite order, which has not yet been paid to her, in the sum of Ten Thousand Two Hundred ($10,200.00) Dollars, together with attorney's fees in the sum of Five Thousand ($5,000.00) Dollars, and Court costs pendente lite.

5. That any community interest of the parties hereto in the Arizona Hotel, being

Lots 1, 3 and 5 of Block 74, original townsite of Phoenix, according to the map of record in the office of the County Recorder of Maricopa County, Arizona,

is hereby charged with payment of the support to the Plaintiff, and that the lien hereinabove set forth is to affix to any community interest in the Arizona Hotel.

6. That Plaintiff is to receive the sum of Ten Thousand ($10,000.00) Dollars as and for attorney's fees, together with her costs herein laid out and expended.

DONE IN OPEN COURT this 14 day of May, 1959.

/s/ R. C. STANFORD, JR.
Judge of the Superior Court

EXHIBIT "B"

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI.

W. A. PORTER,
Plaintiff,
vs.
GLADYS PORTER,
Defendant.

No. .....

COMPLAINT.

Comes now the above-named plaintiff and for cause of action against the above-named defendant complains and alleges:

I.

That plaintiff is and for several years last past has been a bona fide resident of and domiciled in Kootenai County, Idaho, residing at Hayden Lake.

II.

That plaintiff and defendant were married June 1, 1940, at Detroit, Michigan, and ever since have been and now are husband and wife.

III.

That as issue of said marriage there have been born four children whose names and ages are as follows: Sandra Jean, age upwards of sixteen; William A. Porter, Jr., age upwards of fifteen; Richard Porter, age upwards of twelve, and Tom Clark Porter, age upwards of two years.

That during the month of December, 1958, the defendant, Gladys Porter, without notice to the plaintiff, departed from the home of the parties to this action at Hayden Lake, Idaho, and took with her the minor children, Tom Clark Porter and Sandra Jean Porter, presumptively for spending the Christmas Holidays in Los Angeles, and with the specific understanding that she would return to the home of the parties to this action at Hayden Lake, Idaho, following the Holiday Season.

That William A. Porter, Jr. is attending a Military School in California, but is a resident of and domiciled with the plaintiff at Hayden Lake, Kootenai County, Idaho, and that Richard Porter is living in the home of the parties to this action at Hayden Lake, Idaho, attending school in Kootenai County, Idaho, and is in the actual physical care, custody and control of the plaintiff. That the children, William A. Porter, Jr. and Richard, have expressed desire to this plaintiff that they remain in his absolute care, custody and control and plaintiff alleges that it is for the best interest of the minor children, Tom Clark Porter, and Sandra Jean Porter, that their absolute care, custody and control be awarded to the plaintiff, subject to the order of this Court as to right of reasonable visitation on the part of the defendant, and that upon the ultimate disposition of this case, that reasonable provision be made not only for the custody of the said children but for their care and support.

That the defendant has refused to return to the home of the parties to this action, the domicile of the entire family, and has been traveling in at least the States of California and Arizona, has refused to divulge to the plaintiff her whereabouts and has refused to permit the plaintiff to reasonably communicate with her or with the two minor children, Sandra Jean and Tom Clark Porter, and that this plaintiff has been deprived of the right of communication with said last two named children, and that said defendant has secreted herself and the children from the plaintiff in either California or Arizona or some other place, although her place of permanent residence and domicile is that of Kootenai County, Idaho.

That except for traveling apparel, so far as is known to this plaintiff, the defendant has left at the home of the parties hereto, at Hayden Lake, Kootenai County, Idaho, all of her personal belongings, clothing, etc.

That the home at Hayden Lake, Idaho, has been maintained continuously for the benefit of the parties to this action and their children, as it was used for the past several years and as it was accepted by the defendant when residing with the plaintiff and their children.

That said defendant has refused to return to the home of the parties hereto, the domicile of the family and their minor children, and has so concealed herself as to make impossible personal contact between the plaintiff and the defendant, and this plaintiff and the two minor children, Sandra Jean and Tom Clark Porter.

That it is for the best interests of the minor children and the parties to this action that the plaintiff be awarded, subject to the further order of this Court, the care, custody, and control of all four minor children, Sandra Jean, William A. Porter, Jr., Richard Porter, and Tom Clark Porter. The Community property assets, that would provide security for the support, maintenance and education of said minor children, are either situate in or subject to the jurisdiction of the State of Idaho.

There are certain property interests in hotels in various states of the United States; that these interests are many and varied and consist of partnership, leasehold and corporate interests, which either own or operate under lease, hotel properties in various states.

IV.

There are community properties situate in Idaho, including the home at Hayden Lake, Idaho, which is a substantial and commodious facility and furnished according to the design and plan of the defendant for the convenience of herself, the plaintiff and the minor children.

The other properties include equities in farm properties in Boundary County, Idaho, and equities in stock interests in several corporations, partnership interests, and other equities—principally in hotel properties, either owned or under lease, most of which are operated under the name of "Continental Hotels System"; the home office of which is situate in Coeur d'Alene, Kootenai County, Idaho, which is a mere five miles from the domicile of the parties hereto.

That the community properties referred to are not capable of division and it would be inequitable and disadvantageous to the partners involved in these property interests, as well as to the parties to this action and said minor children, to have the property interests dissolved, and the assets distributed, or the corporate stock interests liquidated, and that to compel such action, except after careful review by this Court, would result in a loss to all of the parties concerned and would adversely affect the security of the minor children.

That it would be equitable for the Court to award to the respective parties interests which would secure their equities, keeping in mind the support, maintenance and education of the minor children, but not so as to destroy the effective and efficient operation of these investments.

That the defendant is wholly incapable of acting as a partner or director, officer or partner in any of said corporations or partnership interests, she having had no experience in the operation or the management of the properties involved, and particularly (sic), the hotel business.

V.

That the defendant has refused to return to the home of the parties hereto, has refused to care for the minor child, Richard, now with the plaintiff, has conducted herself as to evidence that she is neither mentally or physically competent to care for or provide for said minor children, has deprived plaintiff of companionship and society, has absented herself from the home, deprived the plaintiff of the custody of Tom Clark Porter, and even the right to visit with or see him, and the same is true of Sandra Jean Porter, the eldest child.

That the defendant left the State of Idaho with a design and unjustified purpose to furtively deprive the plaintiff of his parental and marital rights and for the additional purpose of deceiving the plaintiff and attempting to deprive the Courts of Idaho of effective jurisdiction of the parties, their children and property rights. That said defendant has by such conduct and procedures embarrassed the plaintiff in his business management and operation of the properties and interest of the parties and this plaintiff's business associates. The defendant has refused to return to the home of the parties hereto, long established at Hayden Lake, and has concealed herself and the minor children, Sandra and Tom Clark, who would normally be residing in the home with these parties, and has deprived the plaintiff of companionship, society, consortium, and has otherwise so conducted herself as to convincingly evidence that she no longer has any real love or affection for the plaintiff and has questionable love and affection for the four minor children, all of which constitutes "EXTREME CRUELTY".

VI.

That plaintiff is willing that there be a fair and equitable division made of the community and other properties of the parties hereto so as to secure the minor children and to assure adequate care and support for them during their minority and concurrently protect the relative equities of the parties hereto, having due regard to the interests of partners, stockholders and creditors in the ventures above-referred to. Many of such properties are incapable of complete division and to compel such would be inequitable and disadvantageous to the partners, the parties to this action and the minor children, and would result in a loss to all parties concerned. After a hearing upon the merits in this matter, plaintiff alleges that an award could be made out of income that would provide security for those minor children and still secure the interests of the parties to this action, and their corporate and partner associates and creditors.

WHEREFORE, plaintiff prays for judgment and decree as follows:

1. For an absolute decree of divorce upon the ground of "EXTREME MENTAL CRUELTY".

2. That the Court award to the plaintiff the absolute care, custody and control of the minor children of the parties hereto, and make adequate provision out of the properties of the parties hereto for the care, support, maintenance and education of said minor children.

3. That the Court make an equitable division or distribution of community properties, having in mind the adequate security for the care, maintenance and support of said minor children.

4. For such other and further relief as to the Court may seem just and equitable.

HAWKINS & MILLER
WM. S. HAWKINS
A member of the firm
Attorneys for Plaintiff
Res. & P.O. Address:
Coeur d'Alene, Idaho

STATE OF IDAHO,
County of Kootenai, ss.

W. A. PORTER, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the complaint knows the contents thereof and believes the same to be true.

W. A. PORTER

Subscribed and sworn to before me this day of May, 1959.

Notary Public for Idaho
Residing at Coeur d'Alene

EXHIBIT "C"

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY F KOOTENAI

State of Iadho,
County of Kootenai, ss

Filed Jul 13 1959 at o'clock M.

E. W. LARSON
Clerk District Court

By.....
Deputy

W. A. PORTER,
Plaintiff,

vs.

GLADYS PORTER,
Defendant.

No. 18556-A
ANSWER AND COUNTERCLAIM

COMES NOW, The above named defendant, and by way of answer to the complaint of the plaintiff on file herein admits, denies and alleges as follows:

I.

Defendant denies each and every allegation contained in said complaint not specifically herein admitted, and answering paragraph I of said complaint, admits the allegations contained therein;

II.

Answering paragraph II of plaintiff's complaint, defendant admits the allegations contained therein.

III.

Answering paragraph III of said complaint, defendant admits that there have been born four children as issue of the marriage of the parties hereto, whose names and approximate ages are set

forth in said paragraph, admits that during the month of December, 1958, the defendant departed from the home of the parties hereto at Hayden Lake, Idaho, and took with her the minor children, Tom Clark Porter and Sandra Jean Porter; admits that William A. Porter, Jr. was attending a military school in California at the time of the filing of the above entitled action and is now under the custody and control of the plaintiff; admits that upon ultimate disposition of this case a reasonable provision should be made, not only for the custody of said children, but for their care and support; admits that defendant has refused to return to the home of the parties to this action; admits that she has left considerable of her personal belongings and clothing at at the former residence of the parties hereto at Hayden Lake, Kootenai County, Idaho; admits that there are community property assets that would provide security for the support, maintenance and education of the minor children of the parties hereto; admits that plaintiff and defendant have certain property interests in hotels in various states of the United States; but defendant denies that her departure frohm Hayden Lake, Idaho, in December, 1958, was without notice to plaintiff, and denies there was any specific understanding that she would return to the home of the parties following the holiday season, having no knowledge of any expressed desires of William A. Porter, Jr., and Richard Porter regarding custody, denies that they have expressed a desire to remain in the care, custody and control of the plaintiff, and alleges in this regard that if any such expressions by said children have been made, they were made because of the coercion, persuasion and domination of the plaintiff over said children; denies that it is for the best interests of the minor children, Tom Clark Porter and Sandra Jean Porter, or for the best interests of any of the minor children, that their care, custody and control be awarded to the plaintiff; denies that defendant has refused to divulge to plaintiff her whereabouts, and alleges that plaintiff for some time has been corresponding with defendant and/or her attorneys, has known of the whereabouts of the defendant, and on or about the 30th day of May, 1959, plaintiff came to the residence of the

defendant in Phoenix, Arizona, and with the assistance of two strong-armed hired men with force and violence held the defendant and her daughter, Sandra Jean Porter, seized Tom Clark Porter, the three year old son of the parties hereto, and took him back to Hayden Lake, Idaho, where, to the best information and belief of the defendant, he is now residing with the plaintiff; denies each and every other allegation in said paragraph contained.

IV.

Answering paragraph IV of said complaint, defendant admits that there are community properties situated in Idaho, including a substantial and commodious home at Hayden Lake, Idaho, certain farm properties in Boundary County, equities in stock interests in several corporations, partnership interests and other equities, principally in hotel properties either owned or under lease, most of which are operated under the name of Continental Hotels system; denies that the community properties are not capable of division or that it would be inequitable or disadvantageous to the parties or the minor children to have certain of the property interests dissolved and distributed, or that such liquidation would necessarily result in a loss to the parties to this action adversely affecting the security of the minor children; admits that it would be equitable for the Court to award certain property interests to the respective parties hereto and that it would be quite proper to make such awards for the purpose of the support, maintenance and education of the minor children; denies that defendant is wholly incompetent or incapable at all of acting as a director, officer or partner of said corporations or partnership interests, and alleges that her capabilities to act in such action are not dependant upon her experiences in the operation or management of hotel properties.

V.

Answering paragraph V of said complaint defendant admits that she may have convincingly evidenced to plaintiff that she no longer has any real love or affection for him, and alleges that

any such loss of affection is the result of plaintiff's acts and misconduct, but denies each and every other allegation in said paragraph contained.

VI.

Answering paragraph VI of said complaint, defendant denies that the plaintiff is willing to be fair and equitable with regard to a division of anything with the defendant; admits that after hearing on the merits in this matter an award could be made out of the income to provide security for the minor children of the parties hereto and still secure the interests of the parties to this action and their corporate and partnership associates and creditors; having no knowledge or information as to which properties plaintiff claims to be incapable of complete division, denies that there are any such properties incapable of division, and that such division would be inequitable and disadvantageous to the partners, the parties to this action, or the minor children; denies that such division would necessarily result in a loss to all parties concerned.

AFFIRMATIVE DEFENSE

For a further and separate defense the defendant alleges:

That the right of the defendant, Gladys Porter, to depart from the household of the plaintiff and to remain separate and apart from him and to establish a separate domicile in the State of Arizona and to have the care, custody and control and education of the minor children of the parties hereto, to-wit, Sandra Jean Porter, William Arnold Porter, Jr., and Tom Clark Porter, has been adjudicated in that certain action brought by the defendant herein against the plaintiff herein for separate maintenance in the Superior Court of the State of Arizona, in and for the County of Maricopa, as case number 55179, which said suit for separate maintenance was instituted on the 13th day of February, 1959, which said State was then and there the separate domicile of the defendant; that said Court is a court of general jurisdiction at and within said State and County and has jurisdiction to try and

determine suits for separate maintenance; that in her complaint defendant alleged due and legal grounds therefor as contained in paragraph VI of said complaint in haec verba as follows:

> "That plaintiff has conducted herself toward the defendant as a good and dutiful wife but notwithstanding the conduct of the plaintiff toward the defendant the defendant has been guilty of excesses, cruel treatment and outrages toward the plaintiff in that defendant has been guilty of extreme physical violence toward plaintiff and has threatened to kill the plaintiff if she employed Mr. Giesler as her attorney; that defendant has been habitually intemperate and the situation can no longer be tolerated by the plaintiff and same has been, and now is, detrimental to her physical and mental health and well-being."

> "That because of these threats plaintiff fears that defendantant will do her great bodily harm if he is not restrained from in any way annoying, molesting, harming, or coming about the plaintiff's residence, or wherever she may be found; and plaintiff further represents and shows unto the court that the giving and notice of application for such temporary restraining order will permit defendant to perform the very acts by him threatened to be committed upon plaintiff and hereby sought to be prevented."

the defendant praying in said suit that she have a decree from said Court granting her the right to live separate and apart from the plaintiff herein, that she be granted the care, custody and control of the minor children of the parties, and that the plaintiff herein be required to pay support money and attorney's fees, and further requiring the Court to issue its temporary restraining order; that thereafter such proceedings were had in said Court and cause, that plaintiff herein was duly and regularly served with process according to the laws of the State of Arizona, as defendant therein, and on the 14th day of May, 1959, upon a hearing duly and legally had in open Court a judgment and decree was duly

given and rendered in said Court and cause in favor of the defendant herein and against the plaintiff herein, authorizing the defendant herein to live separate and apart from the plaintiff herein, requiring the plaintiff herein to pay for the support of the minor children of the parties hereto and the defendant herein, the sum of $3,000.00 per month, commencing on the 15th day of May, 1959, and a like sum on the 15th day of each and every month thereafter; that defendant herein have the care, custody and control and education of the minor children of the parties hereto then within the jurisdiction of the Court, to-wit, Sandra Jean Porter, William Arnold Porter, Jr., and Tom Clark Porter; that defendant herein have a lien on all of the community property of the parties for support under a pendente lite order on the sum of $10,200.00, together with attorney's fees in the sum of $5,000.00 and court costs pendente lite; that the community interest of the parties hereto and therein in the Arizona Hotel, the legal description of the same being more particularly described in said decree, be charged with payment for the support of the defendant herein, and that said lien was to affix to any community interest in said Arizona Hotel; that defendant herein receive the sum of $10,000.00 as and for attorney's fees together with her costs laid out and expended; that a copy of said decree of separate maintenance in said Court and cause, duly certified by Walter S. Wilson, Clerk, and Henry S. Stevens, Judge of the Superior Court of Maricopa County, State of Arizona, is attached hereto marked Exhibit "A" and hereby made a part hereof as though set forth in full.

WHEREFORE, Defendant prays that plaintiff take nothing by his complaint, and that she be hence dismissed with her costs.

COUNTERCLAIM

FIRST COUNT

The defendant herein, Gladys Porter, as and for a counter-claim against W. A. Porter, the plaintiff herein, alleges as follows:

I.

That defendant is a resident of Maricopa County, State of Arizona, and plaintiff is a resident of Hayden Lake, Kootenai County, State of Idaho.

II.

That the parties hereto were married on or about the 1st day of June, 1940, at Detroit, Michigan, and now are and at all times since said date have been husband and wife;

III.

That there have been born as issue of the marriage of the parties hereto four children, namely, Sandra Jean Porter, age 16 years, William Arnold Porter, Jr., age 15 years, Richard Porter, age 13 years, and Tom Clark Porter, age 3 years; that said children are all within the jurisdiction of this Court, save and except the child, Sandra Jean Porter; that the defendant is a woman of refinement, a a good mother and a fit and proper person to have the care, custody and control of the children of the parties hereto;

IV.

That the parties hereto have acquired as community property ownership or lease hold rights in and to approximately eight hotels located in the western States; that the parties hereto own a farm or ranch at Bonners Ferry, Idaho, of approximately 2,500 acres, a home at Hayden Lake, Idaho, valued in excess of $125,000.00; that defendant believes and therefore alleges that she has a community interest in certain other properties controlled by plaintiff, including but not limited to, stocks, bonds, bank accounts and real property, the whereabouts and description of which are at this time unknown to defendant; that the parties hereto own as community property an interest in the Arizona Hotel located at the corner of Third Avenue and Washington Street in Phoenix, Arizona, more particularly described as Lots 1, 3 and 5 in Block 74, Original Townsite of Phoenix, Arizona, according to the map

of record in the office of the County Recorder, Maricopa County, Arizona;

V.

That defendant is without funds with which to support herself and the minor children of the parties hereto who are within the jurisdiction of this court or with which to pay court costs or attorney's fees, so that she may properly defend herself and counterclaim as to her legal and equitable interests in this action.

VI.

That during the marriage of the parties hereto the defendant has conducted herself as a good and dutiful wife, but the plaintiff has disregarded his marriage vows and obligations, and, without just cause or provocation, has been guilty of extreme cruelty by wilfully and knowingly inflicting upon the defendant grievous mental and physical suffering, more particularly as follows, to-wit:

> In that from time, and particularly during the last few months the parties were living together as husband and wife, the plaintiff has been guilty of excesses, cruel treatment and outrages toward the defendant, has exhibited extreme physical violence toward defendant, has threatened to kill her if she employed Mr. Giesler as her attorney; and has been habitually intemperate, has beaten defendant and made other threats and overtures toward taking her life, all without just provocation,

which said acts, together with other acts not herein specifically alleged, caused the defendant to leave the Idaho residence of the parties hereto in December, 1958, in fear for her life and in fear of molestation by plaintiff and in fear for the safety and welfare of the daughters of the parties hereto, Sandra Jean Porter, and the three year old son of the parties hereto, viz. Tom Clark Porter;

> That on or about the 30th day of May, 1959, plaintiff, together with two hired strong-armed men, broke into the

residence of the defendant in Phoenix, Arizona, one of the men grabbed and held, against her will, the daughter of the parties hereto, viz, Sandra Jean Porter, the other grabbed and held defendant while the plaintiff grabbed the minor son of the parties hereto, to wit, Tom Clark Porter, age 3 years; and by such force and violence and against the will of the defendant and contrary to the order of the Superior Court of the State of Arizona, in and for the County of Maricopa, and against the peace and dignity of and contrary to the laws of the State of Arizona, plaintiff removed and transferred said minor child, Tom Clark Porter, from the home of the defendant and informed the defendant that she would not see the child again.

which said acts on the part of the plaintiff were caluculated to and did cause defendant grievous mental pain and anguish, completely destroying the legitimate objects of matrimony, convincing the defendant that the continuation of the marriage relationship between defendant and plaintiff is useless and futile and can serve only to make defendant unhappy and ill; and that plaintiff is an unfit and improper person to have the care, custody and control of the minor children of the parties hereto, and defendant alleges that it is for the best interests of all of the minor children of the parties hereto that their care, custody and control be awarded to the defendant herein.

VII.

That defendant has employed attorneys herein, to wit, Jerry Giesler of Beverly Hills, California, Wilson & Wilson of Phoenix, Arizona, and Givens, O'Leary, Doane & Givens, of Boise, Idaho; that it is necessary for the defendant's protection of her interests in this action that all of such attorneys be employed and that plaintiff should be required to pay to defendant for attorneys' fees incurred and to be incurred in this action the sum of $25,000.00; that defendant has been accustomed for the upkeep and maintenance of the household of the parties hereto, and for

her support of the minor children, the sum of $3,000.00 per month, and that said sum is a reasonable sum to be awarded to defendant in this action for her support and support of the minor children of the parties hereto; that it is anticipated that this action will be lengthy and complicated, requiring considerable expense to defendant to defend herself and protect her interests in this action, for transportation, costs of depositions, filing costs, transcript fees and other matter, and that the sum of $2,500.00 should be granted to her as suit money pendente lite in this action, and upon final hearing an award for her actual costs and expenses should be made; that defendant alleges that upon hearing of this case on its merits the Court should make a proper and equitable decree awarding to defendant as her sole and separate property not less than one-half of the community property of the parties hereto; that an order to show cause should issue requiring the plaintiff to appear on a day certain and show cause, if any he has, why he should not be required to pay to defendant, as and for her support and the support of the minor children pendente lite, the sum of $3,000.00 per month; why that certain order of the above entitled Court dated May 27, 1959, regarding the care, custody, control, maintenance, support and education of the children of the parties hereto, should not be set aside and held for naught; why plaintiff should not be required to pay to the defendant forthwith the sum of $2,500.00 suit money for the defense and prosecution of this action in her behalf and the sum of $15,000.00 attorneys' fees, pendente lite.

SECOND COUNT

As and for a second count to this Counterclaim against W. A. Porter, defendant alleges:

I.

Defendant realleges paragraphs I through V of her First Count to this Counterclaim as though set forth herein in haec verba.

II.

That at all times hereinafter mentioned, the Superior Court of the State of Arizona, in and for the County of Maricopa, was a court of general jurisdiction over all matters in equity and law, duly created and organized under and by virtue of the laws of the State of Arizona;

III.

That on or about the 13th day of February, 1959, the defendant herein commenced an action for separate maintenance in said Court against plaintiff, herein; that at said time and place defendant had established a separate domicile in the State of Arizona; that plaintiff herein was duly and regularly served with process in accordance with the laws of the State of Arizona as defendant therein, and on the 14th day of May, 1959, upon a hearing duly and legally had in open court, a judgment and decree was duly given and rendered in favor of defendant herein and against plaintiff herein whereby defendant was authorized to live separate and apart from plaintiff; plaintiff was required to pay to the defendant for her support and the support and maintenance of the minor children of the parties, the sum of $3,000.00 per month commencing on the 15th day of May, 1959, and a like sum of $3,000.00 each and every month thereafter until further order of the court; defendant herein was awarded the care, custody, control and education of the minor children of the parties then within the jurisdiction of the court, to wit; Sandra Jean Porter, William Arnold Porter, Jr., and Tom Clark Porter; defendant was given a lien on all the community property of the parties hereto for her support under a pendente lite order in the sum of $1,200.00, together with attorneys' fees, in the sum of $5,000.00, and court costs pendente lite and the defendant was to receive from the plaintiff the sum of $10,000.00 as attorneys' fees, together with costs therein laid out and expended;

IV.

That no part of the monies required by the aforesaid decree have been paid to the defendant;

V.

That a copy of said Decree of Separate Maintenance in said court and cause duly certified by Walter S. Wilson, Clerk, and Henry S. Stevens, Judge of the Superior Court of Maricopa County, State of Arizona, is attached hereto marked Exhibit "A" and made a part hereof as though set forth herein in full;

VI.

That with respect to all matters adjudged in said decree and over which said court had jurisdiction, said decree is entitled to be given full faith and credit by the courts of the State of Idaho and should be established as a foreign judgment by this court in the manner provided by law.

WHEREFORE, Defendant and counterclaimant prays judgment against plaintiff and counterdefendant as follows:

FIRST COUNT

1. That the bonds of matrimony heretofore and now existing between plaintiff and defendant be dissolved and the defendant be granted a divorce from the plaintiff on the grounds of extreme cruelty, and that each of the parties hereto be restored to the status of single persons;

2. That defendant be awarded the care, custody and control of the minor children of the parties hereto, namely, Sandra Jean Porter, William Arnold Porter, Jr., Richard Porter, and Tom Clark Porter;

3. That plaintiff be required to pay defendant the sum of $3,000.00 per month for the support, maintenance and education of the minor children of the parties hereto and for the

support and maintenance of defendant until further order of the court;

4. That upon final hearing of the above entitled matter, plaintiff be required to pay to defendant the sum of $2,500.00 suit money in this action together with such additional sums that may have been actually expended by defendant by way of suit money, and the sum of $25,000.00 for attorneys' fees;

5. That defendant be awarded not less than one-half of the community property of the parties hereto within the jurisdiction of this Court;

SECOND COUNT

6. That that certain Decree of Separate Maintenance attached hereto as Exhibit "A" be given full faith and credit by this court with respect to all matters therein contained and over which the Superior Court of the State of Arizona, in and for the County of Maricopa, had jurisdiction and that the plaintiff be required to pay, pursuant to said decree, the sum of $3,000.00 per month for the months of May, June and July, 1959, and for each and every month thereafter, together with the sum of $10,200.00 past support monies due defendant under pendente lite order, and $15,000.00 as and for attorneys' fees incurred by defendant in said action, together with interest thereon in the sum of 6% per annum from Many 15, 1959; and

7. For such other and further relief as to the Court seems just and proper in the premises.

DATED This 10th day of July, 1959.

JERRY GIESLER
9200 Wilshire Boulevard
Beverly Hills, California

WILSON & WILSON
522 Luhrs Building
Phoenix, Arizona

GIVENS, O'LEARY, DOANE & GIVENS
DAVID DOANE
Member of the Firm
Residence and Post Office Adress:
1530 Idaho Street
Boise, Idaho

ATTORNEYS FOR DEFENDANT

Counsel's note:
(Decree of Separate
Maintenance attched
to Original Complaint)

"EXHIBIT D"

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,
COUNTY OF KOOTENAI, ss

Filed Dec 18 1959 at ..... o'clock .....M.

E. W. LARSON,
Clerk District Court

HAROLD E. PETERSON
Deputy

W. A. PORTER,
Plaintiff,

vs.

GLADYS PORTER,
Defendant.

No. 18556-A

ORDER

THIS MATTER having come on for hearing before the Honorable ROBT. E. McFARLAND, Judge, sitting without a jury, upon motion and affidavit of the plaintiff, W. A. PORTER, wherein said plaintiff did seek relief from that order made and entered by the court on the 5th day of October, 1959, in respect to the care, custody and control of the minor child, TOM CLARK PORTER; for reduction of support money for the minor children; for credit towards suit money; and to enjoin and restrain the defendant, GLADYS PORTER, during the pendency of this action from using credit card in her possession for airplane travel; and from pursuing, maintaining and prosecuting actions in the State of Arizona against the community property of the parties hereto; and it appearing to the court that the defendant has filed counter affidavits herein in opposition to the relief requested by the plaintiff, and said defendant has further appeared generally in this action by way of Answer and Counterclaim wherein by said Counterclaim the defendant seeks a divorce from the plaintiff; and it further appearing to the court that in the Answer

of the defendant, GLADYS PORTER, it is therein alleged and admitted that the property interest of the parties hereto in that property known as the Arizona Hotel is owned by the community of the parties hereto and is therefore subject to the control of the plaintiff during the pendency of this action,

NOW, THEREFORE, the Court being fully advised in the premises, having considered the affidavits, oral and documentary evidence, the arguments of counsel and the law, now makes and enters herein the following order:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that that Order made and entered herein by the above entitled court on the 5th day of October, 1959 be and the same is hereby modified as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the sum of Seven Hundred Dollars ($700.00) per month heretofore awarded to the defendant as temporary allowance and temporary support money be, and the same is hereby modified and reduced to the extent of Seventy Dollars ($70.00) per month while the plaintiff, W. A. PORTER, has the care and control of TOM CLARK PORTER, a minor child.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as an off-set against suit money which was awarded to the defendant by that order of October 5, 1959, in the amount of $1,500.00, the plaintiff shall have a credit and off-set in the amount of Six Hundred Eight Dollars and forty-three cents ($608.43) for bills incurred by the defendant which the plaintiff was required and obligated to discharge.

It IS FURTHER ORDERED, ADJUDGED AND DECREED that the equity of the community of W. A. PORTER and GLADYS PORTER, in that Boundary County property described as follows, to-wit:

All of Unit Twenty-five (25) of the Rural Subdivision of Fitzpatrick Brothers Tracts, according to the plat thereof as

recorded in Book One of Plats at page 10, records of Boundary County, Idaho, District 15 in Section 31 and 32, Township 62, North Range 2 East of the Boise Meridian;

be sold for the sum of Six Thousand Dollars ($6,000.00), which sum shall be first paid to discharge and retire funds and sums which the plaintiff, W. A. PORTER, has borrowed in the amount of Three Thousand Dollars ($3,000.00) and the balance thereof shall be expended only upon order of the court and that an accounting thereof shall be rendered to the court and to the defendant. That said sale and transfer thereof shall be by such instruments executed by the parties hereto as may be necessary to transfer said title and if either party hereto refuses, neglects or declines to execute the necessary deeds, contracts, agreements or assignments to effectuate said transfer upon demand of the other party within ten (10) days, that the clerk of this Court shall thereafter be empowered to execute for and on behalf of said refusing party, to sign, execute and deliver such deeds, instruments, contracts or assignments as may be necessary to carry into force and effect this order and the sale and assignment of said property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that those bonds as shown by Exhibit ..... adduced at the time of said hearing, be sold and the proceeds thereof used solely and exclusively for the education of said children, and an accounting of the expenditure thereof shall be rendered on the first day of each month commencing on the fiirst day of February, 1960.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, GLADYS PORTER, her agents, representatives, privies and assigns, be and the same are hereby enjoined and restrained during the pendency of this action from in any way interfering with the management and control of the community property of the parties hereto during the pendency of this action, and that said defendant, her agents, representatives,

privies and assigns, are enjoined and restrained from pursuing, maintaining and prosecuting any action or actions in the State of Arizona against the community property of the parties hereto in the wasting thereof or from taking any action or actions which interfere with the management and control of the community property by the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that GLADYS PORTER be and she is hereby enjoined from using, during the pendency of this action, any credit cards in her possession, and incurring any expenses or obligations for airplane travel and charging the same as against the plaintiff herein.

IT IS FURTHER ORDERED that that order of October 5, 1959, shall be in all other respects, except as herein modified, in full force and effect until further order of this court.

DATED this 16th day of December, 1959.

/s/ ROBERT E. McFARLAND
District Judge.

STATE OF IDAHO,
COUNTY OF KOOTENAI, ss

This is to certify that the foregoing is a true copy of the original now on file or record in this office.

E. W. LARSON
Clerk of Dist. Court

AUDITOR & RECORDER
By /s/ HAROLD E. PLUM

"EXHIBIT E"

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,
County of Kootenai, ss

Filed Jan. 3, 1961, at ..... o'clock .....M.
E. W. LARSON
Clerk, District Court, by Harold E. Plum, Deputy.

W. A. PORTER,
Plaintiff,

vs.

GLADYS PORTER,
Defendant,

and

PEARLINE PORTER and PAULINE PORTER LEONARD
Plaintiffs in Intervention;

vs.

W. A. PORTER and GLADYS PORTER
Defendants in Intervention.

No. 18556-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled case having come on regularly for hearing upon the complaint of the plaintiff and answer and counterclaim of defendant, and of the intervenors and answer thereto; the plaintiff appearing in person and by and through his attorney, E. L. MILLER, of Coeur d'Alene, Idaho, the defendant appearing in person and with her attorneys, DAVID DOANE of the firm of Givens, Doane and Givens, Boise, Idaho, and WILSON & WILSON, of Phoenix, Arizona, and the intervenors appearing during the course of trial and being represented by their attorney, J. WARD ARNEY of Coeur d'Alene, Idaho. Whereupon wit-

nesses were sworn and testified for and on behalf of the plaintiff, defendant/counter-claimant, and intervenors, and both oral and documentary evidence having been introduced and received into evidence and the court having considered the evidence, and two recesses having been taken and said case having been concluded on May 6, 1960, subject to the taking of depositions, and said depositions thereafter being duly and regularly taken; and attorneys for all parties having submitted their briefs to the court, and the court having considered all evidence and briefs, now makes and enters herein the following

FINDINGS OF FACT:

I.

Plaintiff and defendant are husband and wife, having been intermarried on June 1, 1940, at Detroit, Michigan.

II.

As issue of the marriage of plaintiff and defendant, there have been born four children, three of which children are now minors, to-wit: WILLJAM A. PORTER, JR., age 17, RICHARD PORTER, age 14, and TOM CLARK PORTER, age 4.

III.

The intervenors are sisters of plaintiff and are residents of the State of California.

IV.

All parties have appeared generally herein and have sought affirmative relief from the court herein. The minor children, issue of the marriage of plaintiff and defendant, as in Finding No. III found, have been, during said proceeding, within the State of Idaho, and subject to the orders of this court. The court finds that it has personal jurisdiction of all parties to this proceeding and personal jurisdiction of the three minor children of the plaintiff and defendant.

V.

Plaintiff and defendant were residents of Kootenai County, State of Idaho, residing at Hayden Lake, Idaho, with their family, until December, 1958, at which time the defendant left the marital home. The plaintiff has been continuously a resident of the State of Idaho throughout, until time of trial.

VI.

Prior to the marriage of plaintiff and defendant, and during the marriage, the plaintiff, intervenors, and a half-brother of plaintiff and intervenors, Andy Rickett, were engaged in the hotel business, owning and operating hotels in various states under corporate and partnership ownerships. That one of the partnership ownerships was styled Rickett Hotel System, a co-partnership, which, in 1948, changed the name from Rickett Hotel System to Continental Hotels System, a co-partnership.

VII.

Ownership of stock in the various corporations except for qualifying shares, were held equally by the community of the plaintiff and defendant, the intervenors and Andy Rickett, the half-brother. The partnership interest in the Rickett Hotel System and as succeeded by the Continental Hotel System, a co-partnership, was likewise equally held by the community of the plaintiff and defendant, with the intervenors and Andy Rickett. In 1948, Andy Rickett sold his interest in all stock in the corporations and the partnership interest in the Rickett Hotel Systems, or the Continental Hotel System, a co-partnership, to the community of the plaintiff and defendant, and thereafter the interest of the community of plaintiff and defendant in and to the Continental Hotel System, a co-partnership, was a 2/3 partnership interest, and the intervenors each held a 1/6 partnership interest in and to the Continental Hotels Systems, a co-partnership.

VIII.

All stock held by the plaintiff and defendant in the various corporations is community property. The 2/3 partnership interest

owned by plaintiff and defendant in the Continental Hotels System, a co-partnership, is community property.

IX.

The court finds that the Arizona Hotel, described as follows, to-wit:

> Lots 1, 3, and 5, Block 7 of Original Townsite of Phoenix, according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings, and equipment and all supplies and every incident and appurtenant, including rental agreements, affecting the same,

is owned by the Continental Hotels System, a co-partnership, and even though the deed to said properties was taken in the names of plaintiff and defendant herein, said properties were purchased with funds belonging to the partnership known as the Continental Hotel System. All taxes and expenses paid thereon were paid by the co-partnership of the Continental Hotel System, and said Arizona Hotel and its allied properties were at all times carried upon the books and records of the co-partnership as an asset thereof.

X.

The defendant left the marital home of the plaintiff and defendant in Hayden Lake, Idaho, in December of 1958, and thereafter instituted an action in the State of Arizona seeking decree of separate maintenance. The plaintiff was not personally served in that action within the State of Arizona, nor did the plaintiff appear therein. The decree of separate maintenance of the State of Arizona awarded the defendant money judgment, which the defendant has sought to enforce herein by way of affirmative defense and counter-claim.

XI.

Plaintiff has failed to prove that the defendant was guilty of mental cruelty and the court finds that the plaintiff is not entitled to a divorce by way of his complaint.

XII.

The court further finds that plaintiff has been guilty of conduct toward the defendant causing defendant grievous mental suffering, and that defendant is therefore entitled to a divorce from said plaintiff.

XIII.

The marital home of the parties, and hereafter described, was purchased with community funds of the plaintiff and defendant, but the deed thereto from the grantors was unto the defendant as grantee, and as her sole and separate property, and as a married woman. The court finds that the plaintiff made a gift of said Hayden Lake Home unto the defendant, of any community interest he had in and to said property, said gift being in nature of atonement for plaintiff's previous conduct, which resulted in the commencement of a suit for divorce in the State of California, and which particular property is described as follows, to-wit:

A part of Lot 7 of Hayden Lake Cottage Sites, Kootenai County, State of Idaho, according to the recorded plat, described as follows:

Commencing at a point on the East line of Lot 7, Hayden Lake Cottage Sites, which point is 306.4 feet South of the Northeast corner of Lot 8, Hayden Lake Cottage Sites, thence South along the east line of Lot 7, a distance of 100 feet to a point; thence westerly 262 feet to a point on the West line of said Lot 7; which point is 101.55 feet North of the Southwest corner of Lot 7; thence North along the West line of Lot 7; 101.55 feet; thence East 262 feet to the point of beginning, together with the dwelling situate thereon and appurtenances

thereunto belonging or in anywise appertaining, which said property is assessed as the North 1/2 of Tax No. 3166;

AND a part of Lot 7, Hayden Lake Cottage Sites, Kootenai County, Idaho, described as follows:

Commencing on the Southwest corner of said Lot 7; thence West along the South line of said Lot 7 a distance of 262 feet, to the Southwest corner of said Lot 7; thence North along the West line of said Lot 101.55 feet to a point; thence East 262 feet to a point on the East line of said Lot 7; thence South 100 feet to the point of beginning.

XIV.

The court finds that prior to the institution of this litigation, the plaintiff gave unto his daughter, Sandra Jean Porter, a certain diamond ring, when said daughter was a mere baby, and that the parties did, in addition thereto, accumulate certain United States Government bonds a portion of which bonds have been, during the pendency of this action, redeemed for the purpose of education of the children of the plaintiff and defendant, and that any bonds standing in the name of Sandra Jean Porter and in the possession of the parties hereto should be delivered unto Sandra Jean Porter for her future and further education.

XV.

The court finds that the defendant is a fit and proper person to have the care, custody and control of Tom Clark Porter age 4, subject to the right of reasonable visitation by the plaintiff herein, and that the plaintiff shall pay unto the defendant for the care, support and maintenance and education of said minor child, the sum of $200.00 per month.

XVI.

The court finds that the plaintiff is a fit and proper person to have the care, custody and control of William A. Porter, Jr. age

17, and Richard Porter, age 14, subject to the rights of reasonable visitation by the defendant.

XVII.

The court finds that the defendant is entitled and shall be awarded, in addition to her sole and separate properties heretofore found, the following described community property, as her sole and separate property, free and clear of any claim of the plaintiff:

1. All household furniture located and within the Hayden Lake home, as heretofore found and described.

2. One 1953 Oldsmobile automobile in her possession.

3. All clothing, personal effects and jewelry of Gladys E. Porter, the defendant.

4. All stock owned by the community of W. A. Porter and Gladys E. Porter, in and to the Rickett Hotels, Inc., the Continental System of America, Inc. free and clear of any claims of W. A. Porter.

5. Four Occidental Life Insurance policies.

6. All monies due and remaining from the sale of the Boundary County property.

XVIII.

The court finds that the plaintiff is entitled to have as his sole and separate property, free and clear of any claim of the defendant, subject to the rights of the intervenors, the following described property:

All right, title, interest and equity that the community of Gladys E. Porter and W. A. Porter had in and to the Continental Hotels System, a co-partnership, being a 2/3 interest in and to said co-partnership.

The intervenors own and hold a 1/6 interest each in and to said Continental Hotels System, a co-partnership.

XIX.

The plaintiff shall further have as his sole and separate property, the following described assets:

1. One 1959 Cadillac automobile.

2. His personal effects, including guns, fishing equipment and sports equipment.

3. All other remaining community property of the plaintiff and defendant not specifically awarded unto the defendant herein.

XX.

The court finds that that interest of Pauline Porter Leonard and Pearline Porter in and to the Continental Hotels System, a co-partnership, formerly the Rickett Hotel System, is a bona fide partnership interest therein, having been purchased and acquired by them by the contribution of capital assets in the early formation of said hotel enterprise. The Court further finds that at all times partnership tax returns have been filed with both the Federal and State governments and that the interest of the intervenors has at all times been so declared by the records, books and files of said co-partnership.

The court further finds that Pauline Porter Leonard and Pearline Porter were not merely nominal partners or employees of said partnership, but that their interest originated in the beginning of such hotel enterprise and that they have held and now hold stock interest in various corporations to the same extent as their ownership exists in and to the Continental Hotels System, a co-partnership.

XXI.

The court finds that the plaintiff is able to pay and that the defendant is entitled to receive the sum of $1,200.00 per month as alimony.

XXII.

The court finds that the defendant has, by virtue of her actions in the State of Arizona, initiated receivership proceedings as against that property heretofore found and denominated as the Arizona Hotel, belonging to the Continental Hotels System, a co-partnership, and that the defendant shall dismiss all proceedings in the State of Arizona including the removal of the receivership affecting that property denominated as the Arizona Hotel, and that the intervenors should dismiss any and all proceedings or suits they have initiated within the State of Arizona arising out of or in any way affecting that property designated as the Arizona Hotel.

XXIII.

The court finds that the plaintiff and defendant should transfer by deed unto the intervenors a one-sixth interest each in and to all properties belonging to the Continental Hotels System, a co-partnership, but standing in the name of W. A. Porter and Gladys E. Porter. The court further finds that W. A. Porter and Gladys E. Porter, are trustees for said properties designated as the Arizona Hotel, standing in their names, for the use and benefit of the co-partnership, the Continental Hotels System.

XXIV.

The court finds that the sum of $12,000.00 is a reasonable sum to be paid unto the defendant's attorneys as attorney fees for professional services rendered in this action.

From the foregoing FINDINGS OF FACT, the court now makes and enters herein the following

CONCLUSIONS OF LAW:

1.

The court has jurisdiction of the parties hereto and subject matter of this action.

II.

As a matter of law, the plaintiff has failed to sustain his burden of proof upon the allegation of his complaint seeking a divorce and is entitled to take nothing thereby.

III.

The defendant, Gladys E. Potter, is entitled to a decree of divorce dissolving, annulling and setting aside forever the bonds of matrimony which have heretofore existed between plaintiff and defendant.

- 9 -

IV.

The Decree of Separate Maintenance of the Superior Court in and for the County of Maricopa, State of Arizona, in Case No. 55179, is not entitled to full faith and credit herein in that the plaintiff was not personally served within the jurisdiction of the State of Arizona court, did not appear therein and the defendant did procure a money judgment against the plaintiff which she sought to enforce here in by virtue of the second count of defendant's counter-claim and of the affirmative defense of her answer. That said Second Court of defendant's counter-claim as relating to the decree of separate maintenance from the State of Arizona shall be stricken from said answer and counter-claim.

V.

The acquisition of that property known as the Arizona Hotel and more particularly described as follows, to-wit:

Lots 1, 3 and 5, Block 74, original townsite of Phoenix, according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixture, furniture, furnishings, and equipment and all supplies and every incident and appurtenant, including rental agreements, affecting the same,

in the names of W. A. Porter and Gladys E. Porter, was, as trustees for the co-partnership of the Continental Hotels System.

VI.

The plaintiff shall execute and deliver unto the defendant a good and sufficient transfer and conveyance of all rights, title, interest and equity that he has in those properties which by the Findings of Fact heretofore entered have been awarded to the defendant.

The defendant shall execute and deliver a good and sufficient transfer and conveyance of all right, title, interest and equity that she

has in and to those properties which by the Findings of Fact heretofore made have been awarded unto the plaintiff.

VIII.

The plaintiff and defendant shall execute and deliver a good and sufficient transfer and conveyance unto the intervenors of a one-sixth interest each of any and all properties standing in their names belonging to the Continental Hotels System, a co-partnership.

IX.

That if any party fails, neglects and refuses to make any such conveyance which the court has heretofore determined necessary to carry into force and effect the Findings of Fact and Conclusions of Law hereof, that the Clerk of this Court is hereby authorized and empowered, for and on behalf of said party who fails, neglects or refuses to make the same within ten (10) days from the date hereof, to make for and on behalf of said non-assenting party the necessary instrument as heretofore concluded.

DATED this 28th day of December, 1960.

Robt. E. McFarland
District Judge

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO
County of Kootenai, } ss. CLERK'S CERTIFICATE OF ATTESTATION

I, E. W. WILSON, Clerk of the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify the foregoing copy of *FINDINGS OF FACT & CONCLUSIONS OF LAW* in the *matter of Porter vs Porter 18556-A* to be correct copy of the original thereof, now remaining in and forming a part of the records of the office of said Clerk.

In witness whereof I have hereunto set my hand and the seal of said Court, at Coeur d'Alene, Kootenai County, State of Idaho, *January 20th, 1961.*

E. W. Larson
Clerk of the District Court

(SEAL)

STATE OF IDAHO
County of Kootenai, } ss. CERTIFICATE OF DISTRICT JUDGE

I, *CLAY V. SPEAR*, one of the Judges of the District Courts in and for the Eighth Judicial District of the State of Idaho, do hereby certify that *E. W. LARSON* who signed the foregoing Certificate of Attestation, is the duly elected and qualified Clerk of the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, and legal custodian of the records and seal of said District Court, that said signature is his genuine handwriting and that all his official acts as such Clerk are entitled to full faith and credit, and I further certify that said certificate of attestation is in due form according to the laws of the State of Idaho.

In witness whereof I have hereunto set my hand and caused the seal of said District Court to be affixed at Coeur d'Alene, Kootenai County, State of Idaho, *January 20th, 1961*.

Clay V. Spear
Judge of the District Court

(SEAL)

STATE OF IDAHO
County of Kootenai, } ss. CERTIFICATE OF CLERK

I, *E. W. Larson*, Clerk of the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that *CLAY V. SPEAR*, who signed the foregoing Certificate, now is, and was at the time of the signing and sealing of said Certificate, Judge of the District Court, in and for the Eighth Judicial District of the State of Idaho, duly elected and qualified; and that the signature of said Judge, as it appears signed to the said Certificate, is his genuine signature.

In witness whereof I have hereunto set my hand and the seal of said District Court of Coeur d'Alene, Kootenai County, State of Idaho, *January 20th, 1961*.

E. W. Larson
Clerk of the District Court

(SEAL)

"EXHIBIT "F"

IN THE DISTRICT COURT OF THE EIGHTH DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

W. A. PORTER,

Plaintiff,

vs.

GLADYS PORTER,

Defendant.

and

PEARLINE PORTER and PAULINE PORTER LEONARD,

Plaintiffs in Intervention,

vs.

W. A. PORTER and GLADYS PORTER LEONARD,

Defendants in Intervention.

NO. 18556-A

JUDGMENT AND DECREE

THIS MATTER having come on regularly for hearing before the HONORABLE ROBT. E. McEARLAND, District Judge, upon the complaint of the plaintiff and the answer and counterclaim of defendant, and the complaint of the intervenors and the answers thereto, the plaintiff appearing in person and by and through his attorney, E. L. MILLER, of Coeur d'Alene, Idaho, the defendant appearing in person and with her attorneys, DAVID DOANE, of the firm of Givens, O'Leary, Doane & Givens, of Boise, Idaho, and WILSON & WILSON, of Phoenix, Arizona, and the intervenors appearing during the course of trial in person and being represented by their attorney J. WARD ARNEY, Coeur d'Alene, Idaho, whereupon witnesses were sworn and did testify for and on behalf of the plaintiff, defendant-counter/claimant, and intervenors, and both oral and documentary evidence having been introduced and received in evidence and the court having considered the evidence and two recesses having been tak-

en and said cause having been concluded on May 6, 1960, subject to the taking of depositions, and said depositions thereafter having been regularly taken, and pursuant to stipulations of the parties made a part of the record herein, and the court having considered the same and the parties having submitted unto the court all evidence and the court having heretofore made and entered herein its Findings of Fact and Conclusions of Law, now makes and entered herein the following:

JUDGMENT AND DECREE:

I.

It is hereby ORDERED, ADJUDGED AND DECREED that the plaintiff shall be and is hereby denied a divorce upon his complaint.

II.

It is hereby ORDERED, ADJUDGED AND DECREED that the defendant be and the same is hereby awarded a decree of divorce from the plaintiff upon the grounds of Extreme Mental Cruelty.

III.

It is hereby ORDERED, ADJUDGED AND DECREED that the care, custody and control of the minor child of the parties, TOM CLARK PORTER, age 4, be and the same is hereby awarded unto the defendant, subject to the right of reasonable visitation by the plaintiff.

IV.

It is hereby ORDERED, ADJUDGED AND DECREED that for the care, support, maintenance and education of the minor child, TOM CLARK PORTER, the plaintiff shall pay unto the defendant, the sum of TWO HUNDRED and No/100 DOLLARS ($200.00), per month, for the support thereof, commencing November 1, 1960, and thereafter during the minority of said child or until further orders be made and entered herein.

V.

It is further ORDERED, ADJUDGED AND DECREED that the care, custody and control of WILLIAM A. PORTER, JR., a minor, and RICHARD PORTER, a minor, be and the same is hereby awarded unto the plaintiff, subject to the right of reasonable visitation by the defendant.

VI.

It is further ORDERED, ADJUDGED AND DECREED that the defendant is entitled to alimony from the plaintiff in the amount of TWELVE HUNDRED and No/100 DOLLARS ($1200.00) monthly, commencing on November 1, 1960, and thereafter until the defendant remarries.

VII.

It is hereby ORDERED, ADJUDGED AND DECREED that the defendant is awarded judgment against the plaintiff for the sum of TWELVE THOUSAND and No/100 DOLLARS ($12,000.00) attorney fees in addition to those sums heretofore allowed unto the defendant during the course of this proceeding, and shall be further entitled to recover herein costs, including the charges and expenses of the accountant, Dale Don, and the handwriting witness, Luke S. May.

VIII.

It is further ORDERED, ADJUDGED AND DECREED that the following described property, to-wit:

A part of Lot 7 of Hayden Lake Cottage Sites, Kootenai County, State of Idaho, according to the recorded plat, described as follows:

Commencing at a point on the East line of Lot 7, Hayden Lake Cottage Sites, which point is 306.4 feet South of the Northeast corner of Lot 8, Hayden Lake Cottage Sites, thence South along the East line of Lot 7, a distance of 100 feet to a point;

Thence westerly 262 feet to a point on the West line of said Lot 7; which point is 101.55 feet North of the Southwest corner of Lot 7; thence North along the West line of Lot 7, 101.55 feet; thence East 262 feet to the point of beginning, together with the dwelling situated thereon and appurtenances thereunto belonging or in anywise appertaining, which said property is assessed as the North ½ of Tax No. 3166;

AND a Part of Lot 7, Hayden Lake Cottage Sites, Kootenai County, Idaho, described as follows:

Commencing at the southeast corner of said Lot 7; thence West along the South line of said Lot 7 a distance of 262 feet to the Southwest corner of said Lot 7; thence North along the West line of said Lot 7, 101.55 feet to a point; thence East 262 feet to a point on the East line of said Lot 7; thence South 100 feet to the point of beginning;

is the sole and separate property of the defendant, free and clear of any claim of the plaintiff, and of the community of the plaintiff and defendant.

IX.

It is hereby ORDERED, ADJUDGED AND DECREED that the defendant is hereby awarded as her sole and separate property, free and clear of any claim of the plaintiff, the following described properties, to-wit:

1. All household furniture, located and within the Hayden Lake home, as heretofore awarded and described.

2. One 1953 Oldsmobile in possession of defendant.

3. All clothing, personal effects and jewelry of said defendant.

4. All stock owned by the community of W. A. Porter and Gladys E. Porter, in and to the Rickett Hotels, Inc., the Continental System of America, Inc., free and clear of any claims of W. A. Porter.

5. Four Occidental Life Insurance Policies.

6. All monies due and remaining from the sale of the Boundary County property.

X.

It is further ORDERED, ADJUDGED AND DECREED that the Continental Hotels System, a co-partnership, comprised of the community of W. A. Porter and Gladys Porter, and the intervenors, Pauline Porter Leonard and Pearline Porter, is the owner of the following described real and personal properties, to-wit:

Lots 1, 3 and 5, Block 74, Original Townsite of Phoenix, according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings, and equipment and all supplies and every incident and appurtenant including rental agreements affecting the same. (Also known as the Arizona Hotel.)

XI.

It is further ORDERED, ADJUDGED AND DECREED that even though the title to that property denominated as the Arizona Hotel was taken in the name of W. A. Porter and Gladys E. Porter, said property is the property of the co-partnership of Continental Hotels System, and that the plaintiff and defendant took said deed as trustees for and on behalf of the co-partnership known as the Continental Hotels System.

XII.

It is hereby ORDERED, ADJUDGED AND DECREED that the plaintiff be and the same is awarded all right, title, interest and equity of the community of W. A. Porter and Gladys E. Porter, in and to the co-partnership known as the Continental Hotels system, which co-partnership owns those properties heretofore described as the Arizona Hotel properties.

XIII.

It is further ORDERED, ADJUDGED AND DECREED that all other community property, belonging unto the community of the plaintiff and defendant, except as has been specifically awarded unto the defendant herein, be and the same is hereby awarded unto the plaintiff, free and clear of any claim, right, title, interest or equity of the defendant Gladys E. Porter, and in addition thereto, said plaintiff shall have, specifically:

1. One 1959 Cadillac automobile.
2. His personal effects, including guns, fishing equipment, and sports equipment.

XIV.

It is further ORDERED, ADJUDGED AND DECREED that the plaintiff shall execute and deliver unto the defendant a proper transfer of all right, title, interest and equity in and to those properties by this decree awarded unto the defendant herein, and that if the plaintiff fails, neglects and refuses to transfer and convey said properties unto the defendant within ten (10) days from the date hereof, then the clerk of this court is hereby empowered, for and on behalf of the plaintiff, to execute and deliver such transfers and conveyance as are necessary to carry into effect the award and properties herein unto the defendant.

XV.

It is hereby ORDERED, ADJUDGED AND DECREED that the plaintiff and defendant shall, within ten (10) days of the date of this decree execute and deliver a transfer and conveyance unto the intervenors and unto each of them, a one-sixth interest each in and to those properties herein designated as the Arizona Hotel and in and to the co-partnership known as the Continental Hotels System, and if the plaintiff and defendant fail, neglect or refuse to execute said conveyance within said ten days from date hereof, then the clerk of this court is hereby empowered to exe-

cute and deliver such conveyances as are necessary to carry into force and effect said judgment.

XVI.

It is hereby ORDERED, ADJUDGED AND DECREED that the defendant shall, within ten (10) days from the date of this decree, execute and deliver unto the plaintiff a transfer and conveyance of all right title, interest and equity, excepting that conveyed unto the intervenors, that the defendant has in those properties known as the Arizona Hotel and that copartnership denominated as the Continental Hotels System, and if the defendant fails, neglects or refuses to execute, transfer and convey within the time as herein prescribed, then the Clerk of this court is hereby authorized and empowered to execute such transfer and conveyance on behalf of said defendant to carry into effect this judgment.

XVII.

It is further ORDERED, ADJUDGED AND DECREED that the defendant shall dismiss any and all proceedings by her maintained against the plaintiff or intervenors, and either of them, in the State of Arizona, including the removal of any and all receivers affecting the properties designated herein as the Arizona Hotel, and that she shall be and is hereby enjoined from maintaining, prosecuting or instituting any action against the plaintiff or intervenors affecting those properties known as the Arizona Hotel from date hereof, and shall further release any judgment or judgments which she has obtained against or affecting said properties known as the Arizona Hotel which she may have acquired.

XVIII.

It is hereby ORDERED, ADJUDGED AND DECREED that the intervenors shall forthwith dismiss any and all proceedings by them instituted or pending in the courts of the State of Arizona.

and that they are hereby enjoined from maintaining, prosecuting or instituting any actions therein which affect those properties denominated herein as the Arizona Hotel properties.

XIX.

It is hereby ORDERED, ADJUDGED AND DECREED that the decree of separate maintenance of the State of Arizona, in and for the County of Maricopa, in Cause No. 55179, is not entitled to full faith and credit herein, and it is further ORDERED, ADJUDGED AND DECREED that the motion to strike those matters contained in the affirmative defense of the answer of the defendant, and in the counter-claim of defendant relating unto or predicated thereon be and the same are hereby stricken.

XX.

It is hereby ORDERED, ADJUDGED AND DECREED that Sandra Jean Porter, issue of the marriage of the parties hereto, be and she is hereby awarded that certain diamond ring given to her during her minority by the plaintiff and is further awarded those Government bonds in possession of either plaintiff or defendant standing in her name.

XXI.

It is further ORDERED, ADJUDGED AND DECREED that defendant do have and recover her costs herein in the amount of $.....

DATED this 28th day of December, 1960.

ROBT. E. MCFARLAHD
District Judge

EXHIBIT "G"

DISTRICT COURT IN THE 8TH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

W. A. PORTER,
Plaintiff and cross-defendant,
vs.
GLADYS PORTER,
Defendant and cross-complainant,

PEARLINE PORTER and PAULINE PORTER LEONARD,
Plaintiff in Intervention,
vs.
W. A. PORTER and GLADYS PORTER,
Defendant in Intervention.

No. 18556-A

NOTICE OF APPEAL

TO: Plaintiff and cross-defendant above named, W. A. PORTER, and to Hawkins and Miller, his attorneys; and to PEARLINE PORTER and PAULINE PORTER LEONARD, plaintiffs in intervention and to J. WARD ARNEY and PAT W. ARNEY, their attorneys; and to the Clerk of the above entitled Court:

YOU AND EACH OF YOU will please take notice that the defendant and cross-complaint above named, Gladys Porter, hereby appeals to the Supreme Court of the State of Idaho from the following portion of that certain judgment and decree entered in the above entitled action, Civil No. 1855-A, on the 28th day of December, 1960, in favor of the above named plaintiff and cross-defendant and the above named plaintiffs in intervention and against the above named defendant and cross-complainant, to-wit:

"XVII

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall dismiss any and all proceedings by her maintained against the plaintiff or intervenors and either of them, in the State of Arizona, including the removal of any and all receivers affecting the property designated herein as the Arizona Hotel and that she shall be and is hereby enjoined from maintaining, prosecuting or instituting any action against the plaintiff or intervenors affecting those properties known as the Arizona Hotel from date hereof and shall further release any judgment or judgments which she has obtained against or affecting said property known as the Arizona Hotel which she may have acquired."

DATED: February 27, 1961.

GERRY GIESLER
200 Wilshire Boulevard
Beverly Hills, California

WILSON and WILSON
522 Luhrs Building
Phoenix, Arizona

GIVENS, O'LEARY, DOANE & GIVENS
By: David Doane
Member of the Firm
Columbia Building
500 Washington Street
Boise, Idaho

Attorneys for Defendant and
Cross-complainant

EXHIBIT "H"

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GLADYS E. PORTER,
Plaintiff,
vs.
WILLIAM ARNOLD PORTER,
Defendant,
PEARLINE PORTER and
PAULINE P. LEONARD,
Plaintiffs in
Intervention,
vs.
GLADYS E. PORTER
Defendant in
Intervention.

No. 55179
RELEASE OF
JUDGMENT

Received from the Court and lodged with me this 27th day of February, 1961.

E. W. LARSON
Clerk District Court
By .....
Deputy

COMES NOW the above-named Plaintiff and Defendant in intervention, GLADYES E. PORTER, and hereby releases that certain Judgment and Decree entered by the above-entitled court, on the 14th day of May, 1959.

This release is made in compliance with that certain Judgment and Decree made and entered in that certain action designated as Civil Action No. 18556-A, byt the District Court of the Eighth Judicial District of the State of Idaho in and for the County of Kootenai on the 28th day of December, 1960.

GLADYS E. PORTER
Gladys E. Porter

State of Idaho
County of Kootenai, ss.

I do hereby certify that this photostat is a true and correct copy of the original and that it was made in my presence, this 15th day of March, 1961.

RUBY WILUND
Notary Public for Idaho

RELEASE OF JUDGMENT

EXHIBIT "I"

DKT 3319 PAGE 442

QUITCLAIM DEED

REVENUE STAMPS

For Value Received I, GLADYS E. PORTER, a married woman dealing with her sole and separate property, do hereby convey, release, remise and forever quit claim unto W. FRANCIS WILSON and RICHARD A. WILSON, both of Phoenix, Maricopa County, State of Arizona, the following described premises, to-wit: an undivided one-half interest in and to that certain real property known as the Arizona Hotel situated and located at Third Avenue and Washington Street, Phoenix, Maricopa County, State of Arizona, being more particularly described as follows:

Lots 1, 3 and 5, Block 74, original townsite of Phoenix, according to the map or plat of record in the office of the County Recorder, of Maricopa County, Arizona:

together with all of that certain personal property consisting of the furnishings, furniture and fixtures, now located in and upon the above-described real property, together with their appurtenances.

/s/ GLADYS E. PORTER

STATE OF IDAHO, COUNTY OF KOOTENAI

On this 5th day of May, 1960, before me, a notary public in and for said State, personally appeared GLADYS E. PORTER known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

(SEAL)

/s/ .....

Notary Public

Residing at Coeurd'Alene, Idaho
Comm. Expires 9-1-62

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the request of

at minutes past o'clock M
this day of 19
in my office, and duly recorded in Book of Deeds at page

.....

Ex-Officio Recorder

By.....

Deputy

Fees $
Mail to:

STATE OF ARIZONA, County of Maricopa; ss.

I do hereby certify that the within instrument was filed and recorded at request of Richard A. Wilson 1960 JUN 20 1 35 105764 Docket Page DKT 3319 pg 442 Records of Maricopa County, Arizona.

WITNESS my hand and official seal the day and year first above written.

DEED

N. C. "KELLY" MOOTE,
County Recorder

By /s/ .....
Deputy 1.75

505 Luhrs Bldg.
51-12

EXHIBIT "J"

QUITCLAIM DEED

REVENUE STAMPS

For Value Received GLADYS E. PORTER does hereby convey, release, remise and forever quit claim unto WILLIAM A. PORTER an undivided two-thirds interest in and to all of her right, title and interest in and to the following described premises, to-wit:

LOTS 1, 3 and 5, Block 74, original townsite of Phoenix according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings and equipment and all supplies and every incident and appurtenant, including rental agreements, affecting the same. (Also known as the Arizona Hotel)

AND That certain co-partnership known as the Continental Hotels System.

Received from the Court and Lodged with me this 27th day of February, 1961.

E. W. LARSON
Clerk District Court

By
Deputy

STATE OF IDAHO,
County of Kootenai, ss.

I do certify that this photostat is a true and correct copy of the original and that it was made in my presence, this 15th day of March, 1961.

RUBY WILUND
Notary Public for Idaho

(This Quitclaim Deed is made in compliance with that certain Judgment and Decree made and entered in Civil Action No. 18556-A, by the District Court of the Eighth Judicial District of the State of Idaho in and for the County of Kootenai on the 28th day of December, 1960.)
together with their appurtenances.

GLADYS B. PORTER

STATE OF IDAHO, COUNTY OF KOOTENAI

On this 27th day of February, 1961, before me a notary public in and for said State, personally appeared GLADYS E. PORTER known to me to be the person whose name is subscribed to the within instrument, and acknoweldged to me that she executed the same.

H. S. SANDERSON
Notary Public

Resides at Coeur d'Alene, Idaho
Comm. Expires 12-30-63

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the request of at minutes past o'clock M., this day of 19 , in my office; and duly recorded in Book of Deeds at page .

Ex-Officio Recorder

By

Deputy

Fees $
Mail to:

EXHIBIT "K"

QUITCLAIM DEED

REVENUE STAMPS

For value received GLADYS E. PORTER does hereby convey, release, remise and forever quit claim unto PEARLINE PORTER and PAULINE PORTER LEONARD, an undivided one-sixth interest each in and to all of her right, title and interest in and to

The following described premises, to-wit:

Lots 1, 3 and 5, Block 74, original townsite of Phoenix according to the maps and records of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings and equipment and all supplies and every incident and appurtenant, including rental agreements, affecting the same. (Also known as the Arizona Hotel)

AND That certain co-partnership known as the Continental Hotels System.

Received from the Court and lodged with me this 27th day of February 1961.

E. W. LARSON
Clerk District Court

By
Deputy

State of Idaho,
County of Kootenai, ss

I do hereby certify that this photostat is a true and correct copy of the original and that it was made in my presence.

RUBY WILUND
Notary Public for Idaho

(This Quitclaim Deed is made in compliance with that certain Judgment and Decree made and entered in Civil Action No. 18556-A by the District Court of the Eighth Judicial District of the State of Idaho in and for the County of Kootenai on the 28th day of December, 1960.)
together with their appurtenances.

Dated: February 27, 1961

GLADYS E. PORTER

STATE OF IDAHO, COUNTY OF KOOTENAI

On this 27th day of February, 1961, before me, a notary public in and for said state, personally appeared GLADYS E. PORTER known to me to be the person who name is subscribed to the within instrument, and acknowledged to me that she executed the same.

H. S. SANDERSON
Notary Public

Residing at Cour D'Alene, Idaho
Comm. Expires 12-30-63.

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the request of at minutes past o'clock M., 19 , in my office, and duly recorded in Book of Deeds at page

Ex-Officio Recorder

By

Deputy

Fees $

Mail to:

EXHIBIT "L"

IN THE DISTRICT COURT OF THE EIGHTH DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

W. A. PORTER, Plaintiff, *vs.* GLADYS E. PORTER, Defendant.	No. 18556-A MEMORANDUM OPINION ON ORDER TO SHOW CAUSE FOR FAILURE TO PAY CHILD SUPPORT

On the 28th day of December, 1960 the defendant was awarded a decree of divorce from the plaintiff in the above entitled court. Defendant was awarded the care, custody, and control of Tom Clark Porter, age 4, one of the children of the above named parties. The decree, among other things, provided that the plaintiff should pay defendant the sum of $200 per month for the support of said child commencing November 1, 1960 and thereafter during the minority of said child or until further order be made and entered in said case.

The plaintiff was given custody of William A. Porter, Jr., a minor, and Richard Porter, a minor. Said decree also provided that plaintiff should pay defendant the sum of $1,200 monthly for alimony commencing November 1, 1960.

Defendant was granted $12,000.00 attorneys fees in addition to the fees allowed during the course of the proceedings in said case. Defendant was granted the home at Hayden Lake and all household furniture situated therein; 1955 Oldsmobile automobile; all her clothes, personal effects and jewelry; all stock owned by the parties in the Ricketts Hotels, Inc. and the Continental Hotel System of America, Inc.; four (4) Occidental Life Insurance Company policies; and all monies due and remaining from the sale of Boundary County property.

The decree provided that the plaintiff be granted all the interest and equity of the community of W. A. Porter and Gladys E. Porter, the parties herein, in and to the co-partnership known as the Continental Hotels System, which owns the Arizona Hotel in Phoenix, Arizona. Plaintiff was also granted one 1959 Cadillac automobile; his personal effects including guns, fishing equipment, and sports equipment. The decree provided that the plaintiff execute and deliver to defendant a proper transfer of all his rights, title, and interest to the properties awarded to the defendant, and that the defendant, within ten (10) days from the date of the decree, should deliver to plaintiff a transfer and conveyance of all her rights and interest in the Arizona Hotel except that interest conveyed to the Intervenors, and that defendant should dismiss any and all proceedings by her maintained against the plaintiff or Intervenors, and either of them, in the State of Arizona, including the removal of any and all Receivers effecting the property designated as the Arizona Hotel, and that she should be enjoined from maintaining, prosecuting, or instituting any action against the plaintiff or Intervenors effecting the Arizona Hotel, and that she should release any Judgment or Judgments which she has obtained against or effecting the Arizona Hotel properties. The decree also provided that the

decree of separate maintenance of the State of Arizona in and for the County of Maricopa in Cause Number 55179 is not entitled to full faith and credit in this court and all matters pertaining thereto were stricken from the Affirmative Defense of the defendant and the Counter-claim of the defendant.

On the 4th day of August, 1961 the defendant filed an affidavit, duly verified, stating that the plaintiff has failed and refused to pay the $200 a month for the support of said Tom Clark Porter, and on the 7th day of August, 1961 this court issued an order for the plaintiff to appear in said court on Thursday the 31st day of August, 1961 at the hour of 10:00 o'clock a.m. and be heard on the issue of child support. Plaintiff appeared in person and with his attorney, Mr. E. L. Miller, at said time and place and the defendant appeared in person and with her attorney, Mr. Stephen Bistline, at said time and place. The plaintiff was sworn and testified for and on his own behalf and documentary evidence introduced, and the court finds that the Arizona Hotel is the principal revenue producer owned by the co-partnership known as the Continental Hotel System and that the plaintiff's income is derived principally from the revenue produced by the Arizona Hotel. The court finds that from January 2, 1960 to February 13, 1961, both dates inclusive, the defendant has received from the Receiver of the Arizona Hotel in Phoenix, Arizona the sum of $18,000.00 and that $7,000.00 of said $18,000.00 was paid from November, 1960 to February 13, 1961, both dates inclusive. The court finds that said sum was ample for the support of said defendant and said Tom Clark Porter. The Court finds that the plaintiff transferred to defendant all stocks as ordered by the court in said decree. The court further finds that the defendant has failed to comply with the decree of this court dated December 28, 1960 in that she failed to dismiss all proceedings brought by her against the plaintiff in the State of Arizona, including the receivership of the Arizona Hotel in Phoenix, Arizona. The Court further finds that on the 4th day of May, 1960 said defendant gave a quitclaim deed to two of her

attorneys, W. Francis Wilson and Richard A. Watson, of Phoenix, Arizona, an undivided one-half interest in and to the Arizona Hotel situated in Phoenix, Arizona; that at the time said deed was given this court had not yet rendered its decree, and that the giving of said deed has made it more difficult for the parties to carry out the terms of said decree and tends to frustrate any decree which the court entered.

The defendant is not in a position to complain about not receiving more money for the reason that she virtually holds the purse strings to the situation, and in failing to dismiss all proceedings in the State of Arizona and in failing to release the receivership of the Arizona Hotel, she has prevented the plaintiff from receiving monies which he could apply toward payment of her alimony and the child's support. Instead of releasing said receivership and having the plaintiff pay her, she chose to receive money from the receiver directly in the courts of Arizona.

This court, therefore, will refuse to place the plaintiff in contempt so long as the defendant does not release the receivership in Arizona and does not dismiss all proceedings in the courts of Arizona.

Will attorney for plaintiff please draw the proper order.

Dated this 15th day of September, 1961.

ROBT. E. MCFARLAND
District Judge

EXHIBIT "M"

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GLADYS E. PORTER,
Plaintiff,
vs.
ARNOLD PORTER,
Defendant.

No. 55179

PEARLINE PORTER and
PAULINE P. LEONARD
Plaintiffs in Intervention,
GEORGE C. KEMBLE,
Plaintiff in Intervention,
vs.
GLADYS E. PORTER,
Defendant in Intervention.

ANSWER AND COUNTERCLAIM

COMES NOW, GLADYS E. PORTER, Plaintiff in the above entitled action by her attorneys, WILSON AND WILSON, and in answer to the Plaintiff's in Intervention, PEARLINE PORTER and PAULINE PORTER LEONARD's supplemental complaint admits, denies and alleges as follows:

I

This answering Plaintiff admits the allegations contained in Paragraph I of Intervenors supplemental complaint.

II

This answering Plaintiff admits the allegations contained in paragraph II of Intervenors' complaint except that this answering Plaintiff denies that the said Idaho Court had jurisdiction of the properties known as the Arizona Hotel located in Maricopa

County, Arizona, for the reason that the same were in custodia legis of the Superior Court of the State of Arizona and that no other Court had jurisdiction or custody of the said properties nor could obtain jurisdiction over said properties to determine the matter of the ownership of the said properties.

III

Answering paragraph III of Intervenor's complaint, this answering Plaintiff admits the allegations contained therein.

IV

This answering Plaintiff denies each and every allegation in paragraph IV of the complaint and in this connection alleges that the execution and delivery of the release referred to in said paragraph IV is void and of no force and effect in that it was done under a void order of the Idaho Court. That said order was void by reason of lack of jurisdiction of the Idaho Court and that the same has been appealed from.

V

This answering Plaintiff admits the allegations contained in paragraphs V, VI, VII, and VIII of Intervenors' complaint and in this connection alleges that the said documents were made and executed only in order to comply with that certain judgment of the Idaho Court herein referred to and further alleges that the said Idaho Court was without jurisdiction to make any ruling or any judgment and decree by which it purported to determine the ownership of the properties known as the Arizona Hotel, for the reason that the same was in Custodia legis and under custody of the Superior Court of Maricopa County, Arizona. Plaintiff further alleges that the Idaho Court was without jurisdiction to order the Plaintiff to release any judgment which she had secured in Maricopa County, Arizona, and that the said judgment of the Suprior Court of the State of Arizona is now and has been since the date of its rendition, a good and valid judgment and has

never been appealed from nor in any way attacked. Plaintiff further alleges that any documents which the said Gladys E. Porter executed under the order of the Idaho Court are void and without effect as the Court acted without jurisdiction.

WHEREFORE, having fully answered Intervenors' complaint Plaintiff prays that the same be dismissed and that she go hence with her costs and attorneys' fees.

WILSON AND WILSON

By .....

Attorneys for GLADYS E. PORTER, Plaintiff
505 Luhrs Building
Phoenix, Arizona

COUNTERCLAIM

COMES NOW GLADYS E. PORTER, Plaintiff in the above entitled action and for cause of action against the Intervenors and the Defendant, ARNOLD PORTER, also known as W. A. PORTER, dba Continental Hotels System, a co-partnership, alleges as follows:

I

That on the 28th day of December, 1960, a judgment and decree of divorce in favor of Plaintiff, GLADYS E. PORTER was entered in the 8th Judicial District in the State of Idaho in and for the County of Kootenai, a true copy which is attached hereto as Exhibit "A"; that the said Court was a Court of general jurisdiction and had jurisdiction over the parties to enter a decree of divorce between the parties.

II

That the said judgment provides that the Defendant ARNOLD PORTER, also known as W. A. PORTER, pay to the Plaintiff,

the sum of Two Hundred Dollars ($200.00) per month as and for the support of the minor child of the parties hereto, to-wit: TOM CLARK PORTER, that the Defendants, ARNOLD PORTER, pay to the Plaintiff the sum of Twelve Hundred Dollars ($1,200.00) per month as and for alimony, that the Defendant, ARNOLD PORTER pay to the Plaintiff the sum of Twelve Thousand Dollars ($12,000.00) as and for Plaintiff's attorneys' fees and that the Defendant, ARNOLD PORTER pay to the Plaintiff, Plaintiff's costs incurred in the Idaho action. That Plaintiff's costs for which she has not yet been reimbursed are in the sum of Three Thousand Two Hundred and Ninety Three Dollars and Thirty One Cents ($3,293.31).

III

That the said Judgment so rendered has become final and has not been vacated, modified or set aside and that the Plaintiff has not remarried and is still single.

IV

That the Plaintiff is a resident of the State of Arizona and that the Defendant is a resident of the State of Idaho.

V

That the Defendant and the Intervenors sworn testimony is that the Defendant, ARNOLD PORTER, also known as W. A. PORTER, is the owner of a two thirds interest in a co-partnership doing business under the firm name and style of Continental Hotels System.

VI

That there is now just due and owing to the Plaintiff under the said judgment and decree of divorce of the State of Idaho, the sum of Twenty-Three Thousand Six Hundred and Ninety Three Dollars and Twenty One Cents ($23,693.21). That this amount will increase by Fourteen Hundred Dollars ($1,400.00)

on the first day of May, 1961, and the first day of each and every month thereafter until the said decree is modified or set aside.

VII

That the Plaintiff, GLADYS E. PORTER, is entitled to have this Court place a charging order upon any and all interest of the said ARNOLD PORTER, also known as W. A. PORTER, in the Continental Hotels System, a co-partnership, the said charging order to be a lien upon his interest therein and to secure the payment of the sums due to Plaintiff as above set forth.

VIII

That the Plaintiff is entitled to have a receiver appointed to take charge of the interest and assets of the said ARNOLD PORTER, also known as W. A. PORTER, in the co-partnership known as the Continental Hotels Systems to reduce the same to money and to pay the Plaintiff the sums due her under the said judgment and decree of divorce.

WHEREFORE PLAINTIFF PRAYS AS FOLLOWS:

1. That the judgment and decree of the 8th Judicial District of the State of Idaho, in and for the County of Kootenai, insofar as the same relates to the divorce of the parties and to the support and alimony of the minor child, TOM CLARK PORTER, and the Plaintiff and to Plaintiff's attorneys' fees and costs, be established as a foreign judgment, that the same be enforced in this action in the manner provided by laws of the State of Arizona in such cases made and provided. That it be ADJUDGED AND DECREED that there is now due and owing to the Plaintiff from the said ARNOLD PORTER, also known as W. A. PORTER, the sum of Twenty Three Thousand Six Hundred Ninety Three Dollars and Twenty One Cents ($23,693.21) and that the same be declared a lien on any interest of the said Defendant, ARNOLD PORTER, also known as W. A. PORTER, in the co-partnership known as the Continental Hotels System.

2. That the Plaintiff, GLADYS E. PORTER, have a charging order issued out of the above entitled court against any interest to the said ARNOLD PORTER, also known as W. A. PORTER, in the said co-partnership known as the Continental Hotels System and that a receiver be appointed as provided under the laws of the State of Arizona to take charge of and possession of the interest and assets of the said ARNOLD PORTER, also known as W. A. PORTER, in the said partnership and to administer the same and to reduce the same to money and to satisfy Plaintiff's lien and charging order against the said interest and said partnership.

3. That the said charging order provides that as additional payments become due under the judgment and decree of divorce of the Idaho Court, that the same become a lien against the interest of the said ARNOLD PORTER, also known as W. A. PORTER in the said Continental Hotels System;

FOR SUCH OTHER and further relief as the Court may deem just and proper in the premises.

WILSON AND WILSON

By .....

Attorneys for Plaintiff,
GLADYS E. PORTER
505 Luhrs Building
Phoenix, Arizona

Copy of the foregoing mailed this ..... day of May, 1961, to:
BEER, SEAMAN & POLLEY
710 Luhrs Tower
Phoenix, Arizona
Attorneys for
PEARLINE PORTER and PAULINE PORTER LEONARD,
Plaintiffs in Intervention.

EXHIBIT "N"

Nov. 20, 61 772783, CK 132632. D Com Civ. 15.00.

INDEXED WALTER S. WILSON. Filed - Clerk. Deputy N. Fieldhouse, 1961, 18, P.M. 3:24.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GLADYS E. PORTER, *Plaintiff.*	No. 132632
vs.	COMPLAINT TO
WILLIAM A. PORTER, *Defendant.*	ESTABLISH JUDGMENT

COMES NOW, GLADYS E. PORTER, by her attorney, W. FRANCIS WILSON and for cause of action against the defendant. WILLIAM A. PORTER, alleges as follows:

I.

That at all times hereinafter mentioned the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai was a court of general jurisdiction duly created and organized by the laws of the state; that at all times hereinafter mentioned, the Superior Court of the State of Arizona, in and for the County of Maricopa was a court of general jurisdiction, duly created and organized by the laws of that state.

II.

That heretofore the defendant herein, WILLIAM A. PORTER commenced an action for divorce in the above mentioned District Court of the State of Idaho; that plaintiff herein GLADYS E. PORTER counterclaimed and that on the 20th day of December, 1960, the Court granted judgement and decree of divorce in her favor. That under the terms of the aforementioned judgement and decree of divorce the defendant herein, WILLIAM A.

PORTER, was required to pay to the plaintiff the sum of two hundred dollars ($200.00) per month as and for the support of the minor child of the parties hereto, towit: TOM CLARK, and the sum of twelve hundred dollars ($1,200.00) per month to the plaintiff herein as and for her alimony, both of said payments to commence on the first day of November, 1960. That in addition thereto the defendant herein was ordered to pay to the plaintiff herein the sum of twelve thousand dollars ($12,000.00) as and for her attorneys' fees together with plaintiff herein's costs incurred in the Idaho action. That no part of the said sums has been paid and that there is now just due and owing under the terms of the aforementioned Idaho judgment of decree and divorce the sum of sixteen thousand eight hundred dollars ($16,800.00) to the first day of November, 1961, and that said alimony and support will accrue at the rate of fourteen hundred dollars per month ($1,400.00) thereafter. That there is just due and owing the sum of three thousand two hundred ninety-three dollars and twenty-one cents ($3,293.21) as plaintiff's costs and the sum of twelve thousand dollars ($12,000.00) as and for attorneys' fees.

III.

That the aforementioned Superior Court of the State of Arizona in and for the County of Maricopa on the 14th day of May, 1959, rendered its judgment and decree of maintenance in favor of the plaintiff herein, GLADYS E. PORTER and against the defendant herein, WILLIAM A. PORTER. That under the terms and conditions of the aforementioned judgment and decree of separate maintenance, plaintiff was awarded the sum of three thousand dollars ($3,000.00) per month as and for support of herself and the minor children of the parties hereto, then in her custody. That the said support order continued in full force and effect to the date of the signing of the judgment and decree of divorce in the Idaho action hereinabove mentioned and that after all just set ups and allowances there is now just due and owing under the terms of the said judgment and decree of separate maintenance the sum of thirty-five thousand dollars ($35,000.00).

WHEREOF, plaintiff prays judgment as follows: That the judgment and decree of divorce of the District Court of the 8th Judicial District of Idaho in and for the County of Kootenai be established as a judgment within the State of Arizona; that the plaintiff have and recover from the defendant judgment under the terms thereof in the sum of sixteen thousand eight hundred dollars ($16,800.00) as and for alimony and support of herself and the minor child of the parties hereto, towit: TOM CLARK PORTER and for the sum of twelve thousand dollars ($12,000.-00) as and for attorney's fees adjudged in the said Idaho judgment, for the sum of three thousand two hundred ninety-three dollars and twenty-one cents ($3,293.21) as and for costs expended in said Idaho action, that judgment and degree of separate maintenance rendered by the above entitled court on the 11th day of May, 1959, be declared a judgment in per sonam and that the plaintiff recover judgement for the sum of thirty-five thousand dollars ($35,000.00) against the defendant under the above referred to judgment of this Court plus interest upon the above referred to sums for plaintiff's costs herein incurred and expended and for such other and further relief as to the Court may seem just and proper in the premises.

/s/ W. Francis Wilson
W. FRANCIS WILSON, Attorney
for Plaintiff, 505 Luhrs Building
Phoenix, Arizona

EXHIBIT "O"

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GLADYS E. PORTER, *Plaintiff.*	No. 55179
vs.	
WILLIAM ARNOLD PORTER, *Defendant.*	WRIT OF NE EXEAT

TO THE SHERIFF OF MARICOPA COUNTY:

Whereas, the application of W. FRANCIS WILSON as attorney for GLADYS E. PORTER, supported by her affidavit, has been presented to this Court, to-wit: an application for a writ of ne exeat against WILLIAM ARNOLD PORTER in the above entitled matter.

And whereas, it appears sufficiently to the Court that a cause exists for the granting of the prayer of said petition, YOU ARE HEREBY COMMANDED to arrest the said Defendant, WILLIAM ARNOLD PORTER, without delay, and to confine him in jail in the jail of Maricopa County, unless the said Defendant shall give sufficient security or bail in the sum of Ten Thousand and No/100 Dollars that he will not leave the state or go beyond the jurisdiction of the Court without leave of this Court.

YOU ARE FURTHER COMMANDED to make a return of this writ, together with a statement of your proceedings thereunder, as prescribed by law.

DONE IN OPEN COURT this 18 day of November, 1961.

/s/ Jack D. H. Hays
Judge of the Superior Court

(COURT SEAL)

EXHIBIT "D"

IN THE DISTRICT COURT OF THE EIGHTH DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

W. A. PORTER,
Plaintiff.
vs.
GLADYS PORTER,
Defendant.
and
PEARLINE PORTER and PAULINE PORTER LEONARD,
Plaintiffs in Intervention.

No. 18556-A

ORDER GRANTING INTERVENTION

The petition of Pearline Porter and Pauline Porter Leonard to intervene in the above entitled action insofar as that action affects the interests of movements in the Continental Hotel System and an integral part thereof, i. e., the Arizona Hotel at Phoenix, Arizona, was heard and considered in open Court at Coeur d'Alene, Kootenai County, Idaho, beginning at 1:00 o'clock P.M. on the date hereof before the undersigned Judge. Plaintiff appeared in person and through Mr. E. L. Miller, his counsel of record; defendant appeared through her attorney, Mr. David Doane; and movements appeared through J. Ward Arney, and the Court being fully advised,

IT IS FURTHER ORDERED that these movants, Pearline Porter and Pauline Leonard, are hereby granted the right to intervene and the complaint-in-intervention shall be duly filed as a part of the instant action, and it was stipulated in open Court that

plaintiff and defendant have been duly served with copies of the complaint-in-intervention and summons thereon is waived.

ENTERED as of this 30th day of November, 1959.

Robt. E. McFarland,
District Judge

(SEAL)

ATTEST:

E. W. Larson,
Clerk of the District Court.

by .....
Deputy.

EXHIBIT "K"

Beer, Seaman & Polley, 710 Luhrs Tower, Phoenix, Arizona, ALpine-1-3111.

Attorneys for Pearline Porter and Pauline P. Leonard, Plaintiffs in Intervention.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GLADYS E. PORTER,
Plaintiff,
vs.
ARNOLD PORTER,
Defendant.

No. 55179

PEARLINE PORTER and PAULINE P. LEONARD,
Plaintiffs in Intervention,
GEORGE C. KEMBLE,
Plaintiff in Intervention,
vs.
GLADYS E. PORTER,
Defendant in-Intervention.

SUPPLEMENTAL COMPLAINT IN INTERVENTION

Leave having been granted, the plaintiffs in intervention, Pearline Porter and Pauline P. Leonard, file this as a Supplemental Complaint against the defendant in intervention, Gladys E. Porter and allege the following additional facts which have occurred or taken place since the filing of the complaint in intervention, to-wit:

I

Heretofore the above named defendant, Arnold Porter, also known as W. A. Porter, being then a resident and citizen of the

County of Kootenai, State of Idaho, commenced an action in the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, against the above named defendant, Gladys E. Porter, praying for an absolute divorce; thereafter, the defendant in said action Gladys E. Porter, being the defendant in intervention in this cause, appeared in said action and filed an Answer and Counterclaim. The plaintiffs in intervention, Pearline Porter and Pauline P. Leonard, intervened in said action in the District Court of the Eighth Judicial District of the State of Idaho, and filed their complaint in intervention to which answers were filed by the parties to said action.

II

Thereafter there was a trial of the issues in said action in said District Court of the Eighth Judicial District of the State of Idaho (hereinafter called Idaho Court), at which the plaintiff and the defendant and the intervenors therein, appeared in person and by their respective attorneys, and evidence was introduced by the respective parties. Thereafter, on the 28th day of December, 1960, said Idaho Court duly rendered and entered its judgment and decree, which is made a part hereof by reference (a true copy of which is attached to the Supplemental Complaint in Intervention, filed on the 10th day of April, 1961, by George C. Kemble, Plaintiff in Intervention, marked Exhibit A in the above cause). Said Idaho Court was and is a court of general jurisdiction duly created and organized under and by virtue of the laws and constitution of the State of Idaho and had jurisdiction of the parties to said action and of the subject matter thereof.

III

Said judgment and decree of said Idaho Court has not been stayed or superseded and has never been vacated, modified or set aside. No appeal has been taken from said judgment and decree of said Idaho Court dated December 28, 1960, save and except that the defendant therein, Gladys E. Porter, has filed a Notice of

Appeal from Paragraph XVII of said judgment and decree of said Idaho Court, but plaintiffs in intervention here are informed and believe that the filing of said Notice of Appeal does not, under the laws of Idaho have the effect of staying or superseding said paragraph of said judgment or any part of said judgment.

IV

The judgment and decree of this court in the above action dated May 14, 1959, has been released and satisfied by the plaintiff Gladys E. Porter by her certain release which has been recorded in the Office of the County Recorder of Maricopa County, Arizona, on March 20, 1961.

V

By quit claim deed dated February 27, 1961, the plaintiff Gladys Porter remised, released and quitclaimed to Pearline Porter and Pauline Porter Leonard an undivided one-sixth interest each in and to all the right, title, interest and estate of said Gladys Porter in and to Lots 1, 3 and 5, Block 74, Original Townsite of Phoenix, Maricopa County, Arizona, together with the good will, trade name, fixtures, furniture, furnishings and equipment and supplies incident and appurtenant to said real property, together with that certain partnership known as Continental Hotels System, which deed was recorded in the Office of the County Recorder of Maricopa County, Arizona, on March 20, 1961.

VI

By deed dated February 27, 1961, the plaintiff Gladys Porter remised, released and quitclaimed unto William Arnold Porter, the defendant in the above entitled action, an undivided two-thirds interest in and to all the right, title, interest and estate of Gladys Porter in and to the property and co-partnership particularly described in the preceding paragraph of this Supplemental Complaint in Intervention, and said deed was recorded in the Office of the County Recorder of Maricopa County, Arizona, on March 20, 1961.

VII

By an Assignment dated February 27, 1961, said Gladys Porter sold, assigned and set over to William A. Porter an undivided two-thirds interest and to Pearline Porter and Pauline Porter Leonard an undivided one-sixth interest each in and to the properties and business of said co-partnership known as Continental Hotels Systems, Inc., and said Assignment was recorded in the Office of the County Recorder of Maricopa County, Arizona, on March 20, 1961.

VIII

On the 7th day of April, 1960, the Sheriff of Maricopa County, Arizona, issued to the plaintiff Gladys E. Porter a Sheriff's deed for the property described in Paragraph 2 of the Complaint in Intervention of George C. Kemble. As shown by the records and files in the above entitled court, said deed was issued after a sheriff's sale held on August 20, 1959, pursuant to a general Writ of Execution issued out of the above styled court in the above entitled action.

WHEREOF, said plaintiffs in intervention pray judgment as follows:

1. That the Arizona Hotel, described as follows,
   Lots 1, 3 and 5, Block 74, Original Townsite of Phoenix, according to the map and record on file in the office of the County Recorder of Maricopa County, State of Arizona, together with all good will, trade name, fixtures, furniture, furnishings and equipment and all supplies in every incident and appurtenant, including rental agreements, affecting the same

is and was at all times since prior to the filing of the action by the plaintiff herein, owned by the Continental Hotels Systems, a co-partnership comprised of the defendant Arnold Porter and the plaintiffs in intervention, Pearline Porter and Pauline P. Leonard.

2. That said Gladys E. Porter does not have any right, title, interest or estate in or to said Arizona Hotel properties.

3. That the sale under execution held on August 20, 1959, by the Sheriff of Maricopa County, Arizona, whereat there was sold to the plaintiff Gladys E. Porter the real property hereinabove described situate in Maricopa County, Arizona, be vacated and set aside and that the Sheriff's certificate of sale issued and delivered to the plaintiff Gladys E. Porter pursuant to said sale under execution be likewise annulled and set aside.

4. That the deed of the Sheriff of Maricopa County, Arizona, to Gladys E. Porter for the Arizona Hotel properties hereinabove described dated on or about April 7, 1960, be vacated, annulled and set aside.

5. That the plaintiff Gladys E. Porter, and all persons holding under her, be adjudged to be barred and estopped by virtue of said decree of said Idaho Court from claiming any right, title, interest or estate in and to said Arizona Hotel properties.

6. For such other and further relief as to the court may seem just and equitable.

BEER, SEAMAN & POLLY

By ..... Paul Beer /s/
Attorney for Plaintiffs
in Intervention
710 Luhrs Tower
Phoenix, Arizona

IN THE SUPREME COURT OF THE STATE OF ARIZONA

WILLIAM A. PORTER,
Petitioner,

v.

HONORABLE
R. C. STANFORD, JR.,
Judge of the Superior Court,
Maricopa County, State of Arizona,
Respondent.

No. 5341

Certified Copy of
Minute Entry.

The petitioner having filed a petition for Writ of Certiorari and the Respondent having filed his objections thereto, an informal hearing was had under the provisions of Rule 1, Rules of the Supreme Court. Attorney Stephen W. Langmade appeared for the petitioner and Attorneys Francis Wilson and Richard Wilson appeared for the respondent.

The Court, being fully advised in the premises, ordered that the Petition for Writ of Certiorari be denied.

DONE IN OPEN COURT this 20th day of February, 1962.

STATE OF ARIZONA,
SUPREME COURT.

I, Sylvia Hawkinson, Clerk of the Supreme Court of the State of Arizona, hereby certify the above to be a full and true copy of the Minute Entry made and entered in the above entitled cause by said Court on February 20, 1962.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of said Court this 4th day of April, 1962.

/s/ Sylvia Hawkinson, *Clerk*.

(SEAL)

STATE OF ARIZONA,
SUPREME COURT.

I, Charles C. Bernstein, Chief Justice of the Supreme Court of the State of Arizona, hereby certify that Sylvia Hawkinson is the Clerk of the Supreme Court of the State of Arizona, which Court is a Court of Record having a seal; that the signature to the foregoing certificate and attestation is the genuine signature of said Sylvia Hawkinson, as such officer; that the seal annexed thereto is the seal of said Supreme Court; that said Sylvia Hawkinson as such Clerk is the proper officer to execute said certificate and attestation, and that such attestation is in due form according to the laws of the State of Arizona.

IN WITNESS WHEREOF, I hereunto set my hand in my official capacity as such Chief Justice at the City of Phoenix, State of Arizona this 4th day of April, 1962.

/s/ Charles C. Bernstein, *Chief Justice*

STATE OF ARIZONA,
SUPREME COURT.

I, Sylvia Hawkinson, Clerk of the Supreme Court of the State of Arizona, which Court is a Court of Record having a seal, do hereby certify that Charles C. Berstein, whose name is subscribed to the foregoing certificate of due attestation, was at the time of signing the same Chief Justice of the Supreme Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate; and I do further, certify that the signature of the Chief Justice above named, to the said certificate of due attestation is genuine.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of said Court this 4th day of April, 1962.

Sylvia Hawkinson, *Clerk*.

(SEAL)

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AUG 22
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 126

WILLIAM A. PORTER,
Petitioner,

vs.

HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona,
Respondent.

MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF

R. G. LANGMADE
34 West Monroe
Phoenix, Arizona
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 126

WILLIAM A. PORTER,

Petitioner,

vs.

HONORABLE R. C. STANFORD, JR., Judge of the Superior Court, Maricopa County, State of Arizona,

Respondent.

MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF

The Petitioner respectfully moves this court to grant Petitioner permission to file this supplemental brief, which is comprised solely of the opinion of the Supreme Court of Idaho in Cause No. 9044, issued by that court on July 12, 1962. The cause was entitled *Porter vs. Porter* and represents a determination of an appeal instituted by Gladys Porter, former wife of Petitioner herein, from a decree of divorce issued her against Petitioner, by the District Court of Kootenai County, Idaho.

It is to this divorce decree of the Idaho trial court that the Arizona courts have refused to grant full faith and credit, and such antecedent issue forms the basis of Petitioner's original request for this Court's jurisdiction through his petition for a writ of certiorari, filed in this court on May 17, 1962. The decision and opinion of the Idaho Supreme Court represent an affirmance of the trial court's jurisdiction and judgment in the divorce cause, and the Petitioner respectfully avers that cognizance of the Idaho appellate opinion must necessarily be of vital significance to this court in its consideration of the intricate problems of jurisdiction now at issue between the states of Arizona and Idaho, and the problem of constitutional full faith and credit which has been raised by the judicial acts of the courts of these two states.

IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 9044

* * *

W. A. PORTER,
Plaintiff, Cross-Defendant and Respondent,

v.

GLADYS PORTER,
Defendant, Cross-Complainant and Appellant,
and
PEARLINE PORTER and PAULINE PORTER LEONARD,
Plaintiffs in Intervention and Respondents,

v.

W. A. PORTER,
Defendant in Intervention and Respondent,
and
GLADYS PORTER,
Defendant in Intervention and Appellant.

Boise,
March Term, 1962
Filed July 12, 1962
L. J. Bideganeta,
Clerk

Appeal from the District Court, Eighth Judicial District, in and for Kootenai County. Hon. Robert E. McFarland, District Judge.

Appeal from portion of a divorce decree. Judgment for plaintiff modified and as modified is affirmed.

Jerry Giesler of Beverly Hills, California(since deceased); Wilson & Wilson of Phoenix, Arizona; Givens, O'Leary, Doane & Givens of Boise for appellant.

Hawkins & Miller of Coeur d'Alene for respondent. J. Ward Arney & Pat W. Arney of Coeur d'Alene for intervenors.

McQUADE J.

This appeal is before this Court upon the judgment roll only. Therein it appears that the trial court entered findings of facts and conclusions of law after having considered oral and documentary evidence. In keeping with the findings of facts and conclusions of law, a decree was entered, from a portion of which this appeal had been taken.

That portion of the decree from which the defendant-appellant takes this appeal is section 17 thereof:

"It is further ORDERED, ADJUDGED AND DECREED that the defendant shall dismiss any and all proceedings by her maintained against the plaintiff or intervenors, and either of them, in the State of Arizona, including the removal of any and all receivers affecting and properties designated herein as the Arizona Hotel, and that she shall be and is hereby enjoined from maintaining, prosecuting or instituting any action against the plaintiff or intervenors affecting those properties known as the Arizona Hotel from date hereof, and shall further release any judgment or judgments

which she has obtained against or affecting said properties known as the Arizona Hotel which she may have acquired."

A motion to dismiss the appeal was made by respondents on the following ground:

"* * * that it is an attempted partial appeal from a portion of a judgment which portion is not independent, separate and distinct from the entire Judgment."

Appellant's single assignment of error is as follows:

"The court erred in enjoining appellant from maintaining or instituting any action or from receiving the benefits of any judgment previously obtained against or affecting the property known as the Arizona Hotel."

An appeal may be taken from a portion of a judgment by virtue of statutory authorization. I.C. § 13-202. This Court, in *Stearns v. Strom*, 68 Idaho 392, 195 P. 2d 337, applied the rule from *8 Bancroft's Code Practice*, sec 6267, p. 8325, at p. 8326, relating to separability of a judgment as applied to our statute:

" 'The rule, however, is subject to the limitation that the part of a judgment from which an appeal is taken must be separable from the remainder, or, in other words, the part whereby the appellant is aggrieved must be so far distant and independent that it may be adjudicated on appeal without bringing up for review the entire judgment or order. Unless the part of the judgment appealed from is separate and distinct from the other issues with which the judgment deals, there is an objection *in*

limine in that the statute directs the appellate court to affirm, modify or reverse the judgment of the trial court, or to order a new trial, and this provision cannot be obeyed while a portion of the case remains in the trial court; in such case, therefore, an appeal from part of the judgment will be dismissed. * * *' "

Appellant contends that the restriction is in excess of the court's equity powers and wrongfully restricts her right to enforce the Idaho judgment in Arizona by the usual proceedings on execution. Considered solely as a jurisdictional question we conclude that the appeal taken from only a portion of the judgment is severable from the remainder, although it is closely related to the trial court's division of community property. The respondent's motion to dismiss the appeal is therefore denied.

There being no transcript of the proceedings, it is necessary to set forth appropriate portions of the trial court's findings of fact:

"Plaintiff and defendant are husband and wife, having been intermarried on June 1, 1940, at Detroit, Michigan.

"As issue of the marriage of plaintiff and defendant, there have been born four children, three of which children are now minors, to-wit:

WILLIAM A. PORTER, JR., age 17,
RICHARD PORTER, age 14, and
TOM CLARK PORTER, age 4.

"The intervenors are sisters of plaintiff and are residents of the State of California.

"All parties have appeared generally herein and have sought affirmative relief from the court herein.

The minor children, issue of the marriage of plaintiff and defendant, as in Finding No. III found, have been, during said proceeding, within the state of Idaho, and subject to the orders of this court. The court finds that it has personal jurisdiction of all parties to this proceeding and personal jurisdiction of the three minor children of the plaintiff and defendant.

"The plaintiff and defendant were residents of Kootenai County, State of Idaho, residing at Hayden Lake, Idaho, with their family, until December, 1958, at which time the defendant left the marital home. The plaintiff has been continuously a resident of the State of Idaho throughout, until time of trial.

"Prior to the marriage of plaintiff and defendant, and during the marriage, the plaintiff, intervenors, and a half-brother of plaintiff and intervenors, Andy Rickett, were engaged in the hotel business, owning and operating hotels in various states under corporate and partnership ownerships. That one of the partnership ownerships was styled Rickett Hotel System, a copartnership, which, in 1948, changed the name from Rickett Hotel System to Continental Hotel System, a copartnership.

"Ownership of stock in the various corporations except for qualifying shares, were held equally by the community of the plaintiff and defendant, the intervenors and Andy Rickett, the half-brother. The partnership interest in the Rickett Hotel System and as succeeded by the Continental Hotel

System, a copartnership, was likewise equally held by the community of the plaintiff and defendant, with the intervenors and Andy Rickett. In 1948 Andy Rickett sold his interest in all stock in the corporations and the partnership interest in the Rickett Hotel System, or the Continenatal Hotel System, a copartnership, to the community of the plaintiff and defendant, and thereafter the interest of the community of plaintiff and defendant in and to the Continental Hotel System, a co-partnership, was a 2/3 partnership interest, and the intervenors each held a 1/6 partnership interest in and to the Continental Hotels System, a co-partnership.

"All stock held by the plaintiff and defendant in the various corporations is community property. The 2/3 partnership interest owned by plaintiff and defendant in the Continental Hotels System, a co-partnership, is community property.

"The court finds that the Arizona Hotel, described as follows, to-wit:

"* * *

is owned by the Continental Hotels System, a co-partnership, and even though the deed to said properties was taken in the names of plaintiff and defendant herein, said properties were purchased with funds belonging to the partnership known as the Continental Hotel System. All takes and expenses paid thereon were paid by the co-partnership of the Continental Hotel System, and said Arizona Hotel and its allied properties were at all times carried upon the books and records of the co-partnership as an asset thereof.

"The defendant left the marital home of the plaintiff and defendant in Hayden Lake, Idaho, in December of 1958, and thereafter instituted an action in the State of Arizona seeking decree of

separate maintenance. The plaintiff was not personally served in that action within the State of Arizona, nor did the plaintiff appear therein. The decree of separate maintenance of the State of Arizona, awarded the defendant money judgment, which the defendant has sought to enforce herein by way of affirmative defense and counter-claim.

"Plaintiff has failed to prove that the defendant was guilty of mental cruelty and the court finds that the plaintiff is not entitled to a divorce by way of his complaint.

"The court further finds that plaintiff has been guilty of conduct toward the defendant causing defendant grievous mental suffering, and that defendant is therefore entitled to a divorce from said plaintiff.

"* * * The court finds that the plaintiff made a gift of said Hayden Lake home unto the defendant, of any community interest he had in and to said property * * *".

"* * *

"The court finds that the defendant is a fit and proper person to have the care, custody and control of Tom Clark Porter, age 4, subject to the right of reasonable visitation by the plaintiff herein, and that the plaintiff shall pay unto the defendant for the care, support and maintenance and education of said minor child, the sum of $200.00 per month.

"The court finds that the plaintiff is a fit and proper person to have the care, custody and control of William A. Porter, Jr., age 17, and Richard Porter, age 14, subject to the rights of reasonable visitation by the defendant.

"The court finds that the defendant is entitled and shall be awarded, in addition to her sole and separate properties heretofore found, the following described community property, as her sole and separate property, free and clear of any claim of the plaintiff:

"1. All household furniture located and within the Hayden Lake Home, as heretofore found and described.

"2. One 1953 Oldsmobile automobile in her possession.

"3. All clothing, personal effects and jewelry of Gladys E. Porter, the defendant.

"4. All stock owned by the community of W. A. Porter and Gladys E. Porter, in and to the Rickett Hotels, Inc., the Continental System of America, Inc., free and clear of any claims of W. A. Porter.

"5. Four Occidental Life Insurance policies.

"6. All monies due and remaining from the sale of the Boundary County property.

"The court finds that the plaintiff is entitled to have as his sole and separate property, free and clear of any claim of the defendant, subject to the rights of the intervenors, the following described property:

"All right, title, interest and equity that the community of Gladys E. Porter and W. A. Porter had in and to the Continental Hotels System, a co-partnership, being a 2/3 interest in and to said co-partnership. The intervenors own and hold a 1/6 interest each in and to said Continental Hotels System, a co-partnership.

"The plaintiff shall further have as his sole separate property, the following described assets:

"1. One 1959 Cadillac automobile.

"2. His personal effects, including guns, fishing equipment and sports equipment.

"3. All other remaining community property of the plaintiff and defendant not specifically awarded unto the defendant herein.

"The court finds that the interest of Pauline Porter, Leonard and Pearline Porter in and to the Continental Hotels System, a co-partnership, formerly the Rickett Hotel System, is a bona fide partnership interest therein, having been purchased and acquired by them by the contribution of capital assets in the early formation of said hotel enterprise. The Court further finds that at all times partnership tax returns have been filed with both the Federal and State governments and that the interest of the intervenors has at all times been so declared by the records, books and files of said co-partnership.

"The court further finds that Pauline Porter, Leonard and Pearline Porter were not merely nominal partners or employees of said partnership, but that their interest originated in the beginning of such hotel enterprise and that they have held and now hold stock interest in various corporations to the same extent as their ownership exists in and to the Continental Hotels System, a co-partnership.

"The court finds that the plaintiff is able to pay and that the defendant is entitled to receive the sum of $1200.00 per month as alimony.

"The court finds that the defendant has, by virtue of her actions in the State of Arizona, initiated receivership proceedings as against that property heretofore found and denominated as the Arizona Hotel, belonging to the Continental Hotels System, a co-partnership, and that the defendant shall dismiss all proceedings in the State of Arizona including the removal of the receivership affecting that property denominated as the Arizona Hotel, and that the intervenors should dismiss any and all proceedings or suits they have initiated within the State of Arizona arising out of or in any way affecting that property designated as the Arizona Hotel.

"The court finds that the plaintiff and defendant should transfer by deed unto the intervenors a one-sixth interest each in and to all properties belonging to the Continental Hotels System, a co-partnership, but standing in the name of W. A. Porter and Gladys E. Porter. The court further finds that W. A. Porter and Gladys E. Porter, are trustees for said properties designated as the Arizona Hotel, standing in their names, for the use and benefit of the co-partnership, the Continental Hotels System.

Appellant argues that she is not contesting award of alimony, nor division of community property, but instead is questioning the trial court's restrictions placed upon the enforceability of a judgment. Appellant denies the trial court's jurisdictional authority to enter a judgment which bears upon the enforceability of the judgment in a sister state.

New York considered this question in *Lynn vs. Lynn*, 97 N. E. 2d 748. In that case Mrs. Lynn in 1942 secured a separate maintenance decree which provided $85.00

per month for herself and child. In 1943 the husband commenced an action for divorce in Nevada wherein the wife appeared personally and by counsel. Upon trial of the cause the Nevada court entered a decree of divorce which recited the wife made no claim for alimony or support and which made no provision for support of the wife or child. The New York court held the Nevada divorce terminated support money obligations imposed by the prior New York judgment.

The question here advances one step further than termination of a separate maintenance decree. This concerns the fundamental authority of the trial court to divide community property and, in apportionment thereof, to prohibit one of the parties from enforcing a pre-existing judgment against that share of the community awarded to the other spouse.

Ohio, in *Gilbert v. Gilbert*, 83 O. S. 265, 94 N. E. 421, disposed of a similar problem. In that case, the wife had secured an award for support money in Ohio and several years thereafter appeared in person in a South Dakota divorce action where property rights were considered and concluded. Subsequently, the wife brought an action in Ohio to enforce her rights under the Ohio order. The Ohio court reasoned that the wife had submitted all her rights under the support money order and any other claims or demands to the South Dakota court, and had become estopped again to assert any right she might have had under the original Ohio decree which was determined by the South Dakota court.

Although appellant was a resident of Arizona she submitted to the jurisdiction of the Idaho Court for determination of her rights. This factor was funda-

mental in the *Lynn* case, supra, wherein it was said: "The additional factor present in this case operated to give the Nevada court jurisdiction of the wife's person and, by that token, vested the tribunal with power to adjudicate the wife's right of support as well as the parties' marital status. That being so, our conclusion is here compelled by command of the full faith and credit clause, for, as the Supreme Court had recently declared, *Sherrer vs. Sherrer*, supra, 334 U. S. 343, 355, 68 S. Ct. 1087, 1093, "If in its application local policy must at times be required to give way, such 'is par' of the price of our federal system.' *Williams v. North Carolina*, 1942, 317 U. S. 287, 302, 63 S. Ct. 307, 215 (87 L. Ed. 279)".

Appellant in arguing this case advances the theory that the trial court tried the title to the Arizona property. We do not agree with such reasoning as it appears the court was computing and dividing the community debts and assets pursuant to in personam jurisdiction of the parties.

Paragraph 17 of the judgment makes specific reference to these matters. Appellant, having submitted to the jurisdiction of the court and having submitted her interest in the community estate to the trial court for determination, is now bound by that determination. No appeal was taken by appellant from the distribution of the community estate as allocated by the district court.

Section 17 of the judgment enjoins the appellant "from maintaining, prosecuting or instituting any action against the plaintiff or intervenors affecting those properties known as Arizona Hotel from date

hereof." This enjoinder will prevent appellant from exercising any rights which she may have outside the present action and to all rights which may enure to her in the future by virtue of this decree or otherwise.

Appellant should not be precluded from enforcing her rights under this decree in this state or any other state providing she has fulfilled her obligations as provided therein. To this extent the trial court is directed to amend its decree.

The Judgment is modified and as modified is hereby affirmed.

Costs to respondent.

SMITH, C. J., TAYLOR, McFADDEN, JJ., and YOUNG, D. J. concur.

Respectfully submitted,

R. G. LANGMADE
34 West Monroe
Phoenix, Arizona
Counsel for Petitioner.